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# ***JPRS Report— Supplement***

## **East Europe**

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***Recent Legislation  
Commercial Code of Czechoslovakia***

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**East Europe**  
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*12 August 1992*

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**Commercial Code of Czechoslovakia**

*92CH0177A Prague HOSPODARSKE NOVINY  
(Supplement) in Czech 21-22 Nov 91*

[“Text” of Commercial Code, dated 5 November 1991,  
which is effective 1 January 1992]

[21 Nov pp 11-22]

[Text] The Federal Assembly of the Czech and Slovak Federal Republic has agreed on the following Commercial Code, which is dated 5 November 1991:

**PART ONE. GENERAL PROVISIONS**

**CHAPTER I. Basic Provisions**

**Article I. Introductory Provisions**

**Section 1. Extent of Applicability**

(1) This law regulates business operations, commercial contracting, and other commercial transactions.

(2) The operations referred to in Paragraph 1 above are subject to the provisions of this law. In the event that certain problems cannot be resolved under any of the provisions of this law, they shall be solved in accordance with the provisions of the Civil Code. In the event it is still not possible to resolve a problem, a determination will be made under standing commercial procedures upon which this law is based.

**Section 2. Business Operations**

(1) A business operation is understood to be a continuous activity independently engaged in by an private individual (entrepreneur) in his own name and on his own responsibility, for purposes of achieving a gain.

(2) According to this law, the following are considered to be entrepreneurs:

- a) a person recorded in the Commercial Register;
- b) a person who engages in entrepreneurial activities on the basis of a small trade permit;
- c) a person who engages in entrepreneurial activities on the basis of a special permit which is not equivalent to a small trade permit;
- d) a private individual who engages in agricultural production and is appropriately registered in accordance with special regulations.

(3) The headquarters of a legal entity and the location at which a private individual engages in entrepreneurial activities is the address which is recorded in the Commercial or Small Trade Register or in another record as the headquarters or location of the operation.

**Section 3**

(1) The following are entered in the Commercial Register:  
a) commercial corporations, cooperatives, and other legal entities required to do so by law;

b) foreign persons under Section 21, Paragraph 4.

(2) A private individual with a domicile on the territory of the CSFR who is an entrepreneur as defined by this law

(Section 2, Paragraph 2, Letters b through d) is recorded in the Commercial Register at his own request or as required by special regulations.

**Section 4**

The provisions of this law are also applicable to the relations of persons other than entrepreneurs, as provided by this law or by special regulations.

**Article II. Companies and Business Assets**

**Section 5**

For purposes of this law, a company is understood to be the total of tangible and intangible assets of the organization. All items, rights, and other assets, which belong to the entrepreneur and which serve to operate the business or which, because of their nature, are intended to serve this purpose, are part of the company.

**Section 6**

(1) For purposes of this law, business assets is the aggregate of assets (items, accounts receivable, and other rights and assets which can be assigned a cash value) and are owned by the entrepreneur and serve or are intended to serve his business operations.

(2) For purposes of this law, the aggregate of business assets and liabilities incurred by the entrepreneur in his entrepreneurial activities is designated as his business assets (hereinafter referred to as “assets”).

(3) Net business assets is defined as total assets less liabilities which have arisen as a result of business operations.

**Section 7. Organizational Divisions**

(1) A subsidiary plant is an organizational division of a company recorded in the Commercial Register as a subsidiary branch or division. In operating a subsidiary, use is made of the company trade name with an indication that it is in fact a subsidiary.

(2) In a position similar to a subsidiary may be another organizational division, provided the law stipulates that it shall be recorded in the Commercial Register.

(3) An operating facility is understood to be the space in which certain business activities are carried out. The operating facility must be designated with the company trade name; the name of the operating facility or another distinguishing designation may be added.

**Article III. Trade Name**

**Section 8**

A trade name is understood to be the appellation under which a company engages in legal acts related to its commercial activities.

**Section 9**

(1) The trade name of a private individual is that individual's name and surname (hereinafter referred to as “name”). The trade name of a private individual may

contain a supplemental entry which distinguishes the person of the entrepreneur or identifies the type of business activity.

(2) The trade name of corporations and cooperatives is the appellation under which they are entered in the Commercial Register. The same is true of legal entities recorded in the Commercial Register on the basis of a special regulations. A supplemental entry indicating its legal form is also part of the trade name.

(3) The trade name of a legal entity which is not recorded in the Commercial Register is the appellation under which it has been established.

### Section 10

(1) A trade name may not be identical to a trade name of another established company. In the case of a legal entity, the listing of another headquarters is sufficient to differentiate the name from the trade name of another legal entity, provided these individuals do not engage in the same type of activities in the same branch or in competing areas where their trade names may lead to misunderstanding. For private individuals, adequate differentiation is the listing of another location for the operation.

(2) If more than one individual engages in commercial activities under a joint name and if they do not establish a legal entity, such individuals are required to meet all obligations arising as a result of this activity jointly and severally.

### Section 11

(1) Anyone who inherits a business from a private individual may continue to operate under the existing trade name, with the added identification of the succession and the name of his successor; the same is applicable for acquisition of a company on basis of a contract from a private individual under provisions of Section 481, Paragraph 2.

(2) If an entrepreneur is a private individual who has changed his name, he may continue to use his previous trade name, provided his new name is included in a supplemental statement.

(3) The trade name of a legal entity passes to the successor legal entity, along with the business, provided the original legal entity ceases operations without liquidation and the successor legal entity assumes the trade name. If the successor legal entity has a different legal form, the supplemental statement must be changed to comply with its legal form.

(4) The transfer of a trade name without the simultaneous transfer of a company is not permitted. Transfer of the trade name is possible even if only one part of the company is transferred, provided the businessman either intends to operate the remaining portion of the company under another trade name or liquidates that part of the company.

(5) If part of the trade name of a legal entity is the name of a partner or a member who ceased being a partner or member, the legal entity may continue to use his name

only with his approval. When a partner or a member of a legal entity dies, the continued use of that individual's name requires the approval of his heirs.

### Section 12

(1) Anyone whose rights have been violated as a result of an unauthorized use of a trade name can compel the unauthorized user to cease and desist from such action and remedy the defect. Moreover, he may demand a cash compensation for the wrongful use of a trade name.

(2) If the unauthorized use of a trade name has resulted in damage, it is possible to use this law to claim compensation for such damage.

(3) In its verdict, the court may grant the participant, whose claim was upheld, the right to publish the verdict and charge the costs to the losing party and, depending on circumstances, can determine the extent, form, and method of publication.

## Article IV. Commercial Transactions

### Section 13

(1) If a businessman is a private individual, he acts personally or through a representative. A legal entity itself acts as statutory agency or through an appointed agent.

(2) The provisions of this law dealing with individual corporations and cooperatives determine the statutory agency, which acts as a businessman, provided the agency is registered in the Business Register.

(3) The manager of an organizational element of a company (Section 7, Paragraphs 1 and 2) who is registered in the Business Register is authorized to carry out all legal acts pertinent to that division on behalf of the business.

### Section 14. Agency

(1) An agency entitles a company representative to act for the businessman in all legal actions resulting from the operation of the company, even though they might otherwise require special powers of attorney. An agency may only be delegated to a private individuals.

(2) An agency does not include authority to misappropriate real estate or encumber it, unless that expressly stated in the delegations of power.

(3) Limits placed on the agency through internal directives has no legal consequences for third parties.

(4) An agency may be delegated to several individuals by providing them individually with the authority to represent and sign for the entity or by requiring at least two or more of the to sign in concert.

(5) An agent signs for the business he represents by adding a clause indicating the agency and his signature.

(6) An agency becomes effective at the time of entry into the Business Register. The intent to register the agency in the Business Register must include the name and residence of the agent and the manner in which he will sign for the

company. If the agency has been delegated several individuals, the authority must specify whether each agent may act independently or how many of the agent must cosign.

#### Section 15

Anyone who has been entrusted with a specific activity in operation of the enterprise has the authority to carry out normal operations of the entity.

#### Section 16

A businessman shall be held responsible for actions of another individual in his operation if a third person could not be aware that the acting individual did not have the authority to do so.

### Article V. Trade Secrets

#### Section 17

One of the company entitlements is a right to keep trade secrets. A trade secret consists of all commercial, production, or technical factors relating to the company which have an actual or at least a potential tangible or intangible value, are not a common knowledge within the appropriate commercial circles, which are to be kept secret at the discretion of the company owner who uses appropriate methods to maintain their confidentiality.

#### Section 18

An individual operating a business to which a trade secret is applicable has the exclusive right of disposal of this secret as he sees fit, specifically the right to authorize its use and determine conditions for their release.

#### Section 19

The right to maintain a trade secret lasts as long as the factors listed in Section 17 above are in effect.

#### Section 20

The company owner is entitled to legal protection against the violation or a threat of violation of his trade secrets as in cases of unfair competition.

## CHAPTER II. Commercial Transactions by Foreign Persons or Legal Entities

### Article I. Basic Provisions

#### Section 21

(1) Foreign individuals may engage in commercial transactions on the territory of the Czech and Slovak Federal Republic under the same conditions and to the same extent as Czechoslovak individuals, unless otherwise provided by the law.

(2) For purposes of this law, a foreign person is understood to be a private individual or a legal entity resident outside the territory of the Czech and Slovak Federal Republic. For purposes of this law, a Czechoslovak legal entity is defined as a legal entity with a domicile on the territory of the Czech and Slovak Federal Republic.

(3) For purposes of this law, commercial transactions by a foreign individual on the territory of the Czech and Slovak Federal Republic are defined as commercial transactions by that person, provided he owns a business or a division of that business on the territory of the Czech and Slovak Federal Republic.

(4) The authorization for a foreign individual to engage in commercial activities on the territory of the Czech and Slovak Federal Republic arises on the day such individual or the business decision are entered in the Business Register, within the scope of their commercial transactions indicated in the registry. The request for registration is submitted by the foreign person.

#### Section 22

The legal advantages enjoyed by a foreign entity other than a private individual according to the Legal Code, under which it was established, also accrue to it in the context of the Czechoslovak Legal Code. The Legal Code, under which such entity was established, also governs its internal legal relations and the guarantees of its members or partners for their obligations.

#### Section 23

Foreign individuals who have the right to engage in commercial transactions abroad are considered to be businessmen under this law.

### Article II. Foreign Material Participation in Czechoslovak Legal Entities

#### Section 24

(1) Under the provisions of this law, a foreign person can, for the purpose of engaging in commercial transactions, share in establishing a Czechoslovak legal entity or may participate as a partner or member in a Czechoslovak legal entity which has already been established. Such an individual may also establish his own Czechoslovak legal entity or become an only partner in a Czechoslovak in one, provided this law permits a single founder or a single partner.

(2) A legal entity may be established in accordance with Czechoslovak law or another law.

(3) In matters enumerated in Paragraph 1 above, foreign individuals enjoy the same rights and obligations as do Czechoslovak individuals.

### Article III. Protection of Property Interests of Foreign Individuals in Engaging in Business in the Czech and Slovak Federal Republic

#### Section 25

(1) The property of a foreign person involved in business operations in the Czech and Slovak Federal Republic and the property of a legal entity with foreign material participation under Section 24, Paragraph 1, above may be expropriated in the Czech and Slovak Federal Republic or have its rights of ownership restricted only on the basis of

the law and in the public interest, which cannot be otherwise satisfied. Such a decision may be appealed in the courts.

(2) Measures listed in Paragraph 1 above must result without delay in compensation commensurate with the full market value of the property impacted by these provisions at the time these provisions were applicable; compensation must be freely transferable abroad in foreign currency.

(3) International agreements by which the Czech and Slovak Federal Republic is bound and which have been published in SBIRKA ZAKONU [LAW GAZETTE] are not affected.

#### Article IV. Relocation of the Headquarters of a Foreign Legal Entity to Czechoslovakia

##### Section 26

(1) A legal entity, established in accordance with the laws of the foreign state for purposes of engaging in business operations, with a seat abroad may relocate its headquarters to the territory of the Czech and Slovak Federal Republic. The condition for this relocation is that it is permitted by the Legal Code of the state in which the legal entity has hitherto had its seat, as well as this Legal Code to the extent to which the entity was established in accordance with the laws of another state.

(2) Relocation of the headquarters as outlined in Paragraph 1 above shall be effective from the day the entity is registered in the Business Register.

(3) The internal legal conditions of a legal entity listed in Paragraph 1 above shall continue to be governed by the Legal Code of the state under which it was established even after relocation of its seat to Czechoslovakia. That Legal Code also regulates the liability of its partners or members toward third parties which, however, must not be less than the liability stipulated by Czechoslovak laws for the identical or similar form of legal entity.

#### CHAPTER III. Business Register

##### Section 27

(1) The Business Register is a public listing of legally prescribed data pertaining to business or individuals ventures subject to a special law.

(2) The facts entered in the Business Register enter into effect on the day on the day the entry was made. An individual who acts in good faith on the basis of a registry entry cannot be challenged by the entity, entered in such business registry, with a claim to the effect that such entry does not have a basis in fact.

(3) The Business Register is maintained by the courts (hereinafter referred to as the "court of registry") which is charged to carry out this duty by a special law.

##### Section 28

(1) The following data are entered in the Business Register:

a) the trade name, the headquarters (in case of legal entities), and the domicile and place of operation (for private individuals) whose place of operation differs from the domicile;

b) the identification number;

c) the type of operations (activity);

d) the legal form of a legal entity;

e) the name and domicile of the individual or individuals who are the statutory agents or members of the organization, indicating to what extent they will act in the name of the legal entity;

f) the designation, location, and type of operations (activities) of a branch enterprise; the name of its manager and his residence;

g) the name of the agent and his residence;

h) other facts, as required by the law.

(2) The additional data entered in the Business Register are:

a) in case of trading companies [subchapter S corporations]—the names and addresses of the partners, their trade name or title and headquarters of the legal entity as a partner;

b) in case of partnerships—the name and address of the partners, their trade name or title and headquarters of the legal entity as a partner, along with indications of who is the general partner and who is a limited partner, the amount of invested capital made by each of the limited partners and the extent to which it has been paid in;

c) in case companies with a limited liability—the names and addresses of the partners, the trade name or title and headquarters of the legal entity as a partner, the capitalization, the share to be invested by each partner and the actual paid-in capital, and members of the board of directors and their addresses, if such board has been established;

d) in case of corporations—the capitalization, number, type, and nominal value of the shares, as well as the names and addresses of the members of the board of directors;

e) for cooperatives—the capitalization, as well as the amounts initial membership investments;

f) for state enterprises—the founder and capitalization.

(3) For foreign entities, information required by Paragraphs 1 a, c, and d, are entered, together with the location of the organizational component of the foreign entity, as well as the name and residence or temporary location of its executive officer.

(4) The Business Register shall further contain information on liquidation proceedings, as well as the name and address of the liquidator or liquidators, a declaration of bankruptcy, including the name and address of the bankruptcy administrator, information on the initiation of

settlement proceedings, and the legal justification for expunging the name of the entity from the Business Register.

(5) Any changes or deletions made in the Business Register shall be recorded without undue delay.

(6) The court of registry shall assign an identification number to the business. The identification numbers will be communicated to the court of registry by the responsible state administration agency.

### Section 29

A branch enterprise shall be recorded in the Business Register in which the entrepreneur is recorded according to the headquarters or location of operations or the owner's domicile. In the event the branch enterprise is located within the jurisdiction of another court of registry, it must also be entered into the Business Register maintained by that court. The same applies for any other organizational unit, specified in Section 7, Paragraph 2, above.

### Section 30

(1) Unless provided otherwise by a special law, the applicant for registration in the Business Register is required to show proof that, effective on the date of entry, he will in fact have full title to operate a small business or have other permit to operate an entity which is to be entered in the Business Register.

(2) As the type of operations of the commercial venture, he will enter operations which can only be carried out by private individuals only if the requester shows that such operations will in fact be carried out by individuals fully authorized to do so in accordance with these regulations.

(3) Foreign individuals, making entry in the Business Register as an authorized agent, are required to show a residency permit for the Czech and Slovak Federal Republic.

### Section 31

(1) A request for entry in the Business Register is submitted by the authorized individual to whom the entry pertains, by an individual authorized to do so in pursuant to law, or by individuals having a written authorization by such individuals to do so.

(2) The request for registration must be substantiated by facts to be entered in the Business Register.

(3) The entry shall be made on the date indicated in the request. In the event the decision pertaining to the entry is published later, or if the request does not indicate a date of entry, the entry shall be made as of the day this decision is published.

(4) The signature of individuals requesting an entry in the Business Register and any powers of attorney (agency) under provisions of Paragraph 1 above must be officially certified.

### Section 32

The courts or other organs shall direct the attention of the court of registry concerning any differences between the actual legal status and the status of the entry in the Business Register as soon as this fact becomes apparent from its operation.

### Section 33

(1) The court of registry shall make public the act of registration in the Business Register.

(2) The court of registry shall notify the appropriate tax agency and the government statistical office, as well as agency which issued the small business or any other commercial authorization, of a registration by a businessman and indicate the type of operations, and any changes or deletions of existing registered facts not later than one week of the date of such entry.

### Section 34

An implementing regulation will establish the method of publicizing entries in the Business Register.

## CHAPTER IV. Business Accounting Procedures

### Section 35

Businessmen are obligated to keep accounts to the extent and following procedures established by special law.

### Section 36

Businessmen who are registered in the Business Register (hereinafter referred to as "registered businessmen") shall use double-entry bookkeeping to account for the status and cash flows, assets and liabilities, net company assets, costs of doing business, income, and profits or losses of their companies.

### Section 37

Unless otherwise determined by the special law, businesses not entered in the Business Register shall use single-entry bookkeeping to show income and expenditures, business assets and liabilities in such a manner as to make it possible to determine net assets and net profits (losses).

### Section 38

The accounting period shall be the calendar year.

### Section 39

(1) Incorporated businesses must have their standard and nonstandard financial statements audited in accordance with special regulations. Other types of companies and cooperatives are subject to this requirement only insofar as a special law so requires.

(2) A businessman is required to provide the auditor with all accounting documents and necessary explanations in accordance with Paragraph 1 above.

(3) The costs related to auditing are borne by the businessmen whose financial statements are subject to audit.

**Section 40**

Corporations shall publish their audited financial statements; other companies and cooperatives are obligated to do so only to the extent required by special law.

**CHAPTER V. Economic Competition****Article I. Participation in Economic Competition****Section 41**

Private individuals and legal entities which enter into economic competition, even though they are not entrepreneurs (hereinafter referred to as "competitors") have the right to freely develop their competitive activities in the interests of attaining economic benefits and to associate for purposes of carrying out such operations; however, they are required to abide by the legally binding rules of economic competition and must not misuse their participation in the competition.

**Section 42**

(1) An abuse of the economic competition is considered to be unfair competition (hereinafter referred to as "unfair competition") and an illegal restrain on free trade.

(2) Illegal trade restraint is regulated by a special law.

**Section 43**

(1) To the extent to which international agreements by which the Czech and Slovak Federal Republic is bound and which have been published in SBIRKA ZAKONU do not indicate otherwise, the provisions of this chapter are not applicable to actions to the same extent to which they apply abroad.

(2) Foreign persons who engage in business operations in the Czech and Slovak Federal Republic according to this law are placed considered to be equals of Czechoslovak entities, insofar as protection against unfair competition is concerned. Furthermore, foreign individuals may seek protection under the international agreements which are binding upon the Czech and Slovak Federal Republic and which have been published in SBIRKA ZAKONU and, if there are no such agreements, they may do so on the basis of mutuality.

**Article II. Unfair Competition****Section 44. Basic Provisions**

(1) Unfair competition is considered to be an anticompetitive act which is in conflict with the good competitive practices and is intended to cause a loss to competitors or consumers. Unfair competition is prohibited.

(2) Unfair competition according to Paragraph 1 above is particularly defined as the following:

- a) deceptive advertising;
- b) deceptive packaging of goods and services;
- c) fraudulent substitution;

- d) fraudulently using on a good name of another company, product, or service of a competitor;
- e) bribery;
- f) defamation of a competitor;
- g) violation of trade secrets;
- h) endangering the health of consumers and the environment.

**Section 45. Deceptive Advertising**

(1) Deceptive advertising is the dissemination of allegations regarding one's own or another business' products, or output which lead to deceptive images and create unfair advantage for one's own product over that of competing businesses in the eyes of the consumer.

(2) Dissemination of allegations is defined as communication through the spoken or written word or press releases, the dissemination of pictures, photographs, radio or television broadcasts, or dissemination of this information through other communications media.

(3) A fact which is, in and of itself, true is also considered to be deceptive if, in view of the circumstances and context used in its commission, can lead to an arroneous perception.

**Section 46. Deceptive Packaging of Goods and Services**

(1) Deceptive packaging of goods and services is considered to be any marking which can result in erroneous beliefs that the goods or services marked or packaged in certain way originate in a certain state, a certain region or location, or originate with a specific manufacturer, or that goods and services have special characteristics or are of a specific quality even if that is not so. It is immaterial whether the markings were placed immediately on the goods, on the coverings, on commercial documentation, etc. It is also immaterial whether the deceptive marking was done directly or indirectly and by what means. The provisions of Section 45, Paragraph 3, are equally applicable.

(2) Deceptive packaging is also defined as such incorrect marking of goods or services to which a supplemental designation has been appended, which is intended to differentiate it from its true origin; such as the expressions "type," "kind," or "method," and if the designation is nevertheless capable of resulting in an erroneous assumption regarding the origin or the nature of the goods or services involved.

(3) Use of names which have become customary in business such as designations serving to mark the type or quality of goods, unless it carries a supplemental designation which is may be deceptive with regard to the actual origin of the product or service, like, for example, the words "real," "original," etc.

(4) This provision does not affect the rights and obligations based on a registered origin of products, trademarks, protected plant varieties, and livestock breeds, as provided by a special laws.

#### **Section 47. Fraudulent Substitution**

The following is identified as fraudulent substitution:

- a) use of trade name or specific company design being used by another company;
- b) use of special company designations or designs or modifications of products, outputs, or commercial materials of a company which are considered by its customers to be characteristic of a certain enterprise or plant (for example, packaging, circulars, catalogues, or advertising);
- c) imitation of another company's products, their packaging, or outputs, unless the imitation involves elements which, from the standpoint of the product, are functionally, technically, or esthetically predetermined and the imitator has taken steps expected of a reasonable man to exclude or, at least, substantially limit inadvertent substitution to the extent that such actions might cause such confusion with the company, a trade name, special design, or specialized products or output of a competing company.

#### **Section 48. Fraudulently Misusing Another's Good Reputation**

Fraudulent misuse of the reputation of a competing company, a product, or a service with goal of illegally benefiting by such good reputation of the competitor.

#### **Section 49. Bribery**

Within the meaning of this law, bribery is defined as an action through which:

- a) a competitor directly or indirectly offers, promises, or renders any kind of benefit to an individual who is a member of a statutory or other agent of a competitor or who is an employee of or has other similar standing involving such competitor, for purposes of having that person engage in unfair procedures at the expense of those competitors, which would result in advantages for himself or for another competitor or some other illegal advantage in the competition; or
- b) the person listed in Subparagraph a) above directly or indirectly requests, tolerates a promise, or actually accepts any kind of benefit for the same purpose.

#### **Section 50. Defamation**

(1) Defamation is an action in which a competitor makes or disseminates statements regarding the conditions, products, or outputs of another competitor which are untrue and are likely to cause harm to that competitor.

(2) Defamation is also the making and dissemination of true statements regarding the conditions, products, and outputs of another competitor to an extent that they may cause harm to the competitor. However, if a competitor was compelled by circumstances to take such an action (justified defense), that action is not considered to be unfair competition.

#### **Section 51. Violation of Trade Secrets**

A violation of trade secrets is an action in which another person illegally receives information on or access to a trade

secret or utilizes a trade secret for his own purposes or to benefit another, where such a trade secret (Section 17) can be used in competition and which the party taking the action acquired as a result of:

- a) the fact that the secret was entrusted or became otherwise known to him (for example, through technical documentation, instructions, drawings, models, samples) on the basis of his employee relationship or another relationship with the competitor within the framework of his function to which he was appointed by the court or by another organization;
- b) unlawful actions of his own or of another's.

#### **Section 52. Endangering the Environment and Health of Others**

Endangering the environment and health of others are acts which a competitor uses to distort the competition by engaging in production, marketing of products, or other outputs which endanger the health or the environment protected by law in order to gain benefits for himself or for another at the expense of the competitors or the consumers.

### **Article III. Legal Protection Against Unfair Competition**

#### **Section 53**

Individuals whose rights have been violated or threatened by unfair competition can demand that the violator cease and desist from such action(s) and remove the defective condition. Moreover, they may demand appropriate satisfaction in form of cash penalties; they may demand compensation for any damage, and require a surrender of any unjust enrichment.

#### **Section 54**

(1) In addition to the competitor, in cases indicated under Sections 48 through 51, the right to demand that a violator cease and desist from act(s) and repair the harm may also be exercised by a legal entity authorized to protect the interests of competitors or consumers.

(2) When proceedings in the conflict involving cessation of an activity or elimination of a defective condition have been initiated or if they have been legally resolved, claims by other authorized persons in the same issue are not acceptable; this does not prevent such other individuals from joining in the initiated litigation according to general provisions for third parties. Legally binding verdicts regarding these claims concerning even a single individual are applicable to all other persons entitled to file such claims.

#### **Section 55**

(1) The public can be excluded by court order or by official action from public oral proceedings under the above provisions if they would result in revelations of trade secrets or harm to public interest.

(2) The court may grant the party in proceedings whose case has been accepted, the right to publish the verdict at the expense of the participant who did not prevail in the

litigation and, depending on the circumstances, also decide on the extent, form, and method of publication.

## PART TWO. BUSINESS CORPORATIONS AND COOPERATIVES

### CHAPTER I. Business Corporations

#### Article I. General Provisions

##### Section 56

(1) A corporation is a legal entity established for purposes of engaging in commercial transactions. Corporations may be partnerships, limited partnerships, [subchapter S] corporations, or publicly held corporations. Corporations may also be established for other purposes not prohibited by a special law.

(2) Unless otherwise provided, individuals as well as legal entities may be the promoters of corporations and may participate in their activities.

(3) Activities listed in Section 30, Paragraph 2, may be carried out by a company only with the assistance of persons enumerated therein. The responsibilities of these persons in accordance with special regulations remains unaffected.

(4) Legally, an individual or a corporation may be a partner in only one joint-stock company [partnership with unlimited liability].

(5) The provisions regulating the individual forms of corporations determine the extent to which the partners are liable for corporate obligations. Their liabilities are also outlined in the provisions on liability (Section 303 and subsequent), unless provided otherwise in this law. If the property is declared to be bankrupt, the partners are liable only to the extent to which creditors, who have recorded their claims on a timely basis, have not been satisfied in the bankruptcy proceedings.

(6) Following a liquidation of a corporation, the partners are liable in the extent of their own share in the liquidation balance (Section 61, Paragraph 4), but as a minimum to the extent to which they were liable while the corporation was in existence. Among each other, the partners shall reach settlement through the same method as they would have been liable during the life of the corporation.

##### Section 57. Incorporation

(1) Unless otherwise provided by this law, incorporation occurs on the basis of a partnership agreement, signed by all promoters. The signatures of the corporate promoters must be notarized.

(2) An incorporation agreement must also be concluded by a representative with a special power of attorney for this purpose. The special power of attorney, with a notarized signature of the representative, is attached to the agreement on incorporation.

(3) If this law permits a corporation to be established by a single owner, the partnership agreement is replaced by the owner's record which, unless specified otherwise by law, is

in the form of a notarized entry. The owner's record must contain the same substantive portions as an incorporation agreement.

##### Capitalization

(1) Capitalization is the sum of the cash value of various securities issued by a corporation to its stockholders.

(2) Capitalization is mandatory in all companies with limited liability. Its sum is recorded in the Business Register.

##### Section 59. Partnership Capital

(1) Partnership capital represents the total assets of the firm which the partners pledge to invest for use in conducting business.

(2) In the event part of the corporate capitalization is paid in in form of non-cash items, the incorporation agreement or the owner's record must also contain the method of the valuation used, unless provided otherwise by the law.

(3) In the event an enterprise or a part of an enterprise is to be part of the capitalization, provisions regarding transfer rights and responsibilities included in the contract to sell the company apply.

(4) If the paid-in capital or its part of it consists of the transfer of accounts receivable, appropriate provisions on transferring accounts receivable apply.

(5) In the event the value of noncash capital made during the period of establishment of the corporation does not equal the sum specified at the time of incorporation, the company may call for the balance to be paid in cash, unless otherwise provided in the incorporation agreement or corporate statutes.

##### Section 60. Investment Accounting

(1) Prior to incorporation, the paid-in capital is accounted for by the promoter who is commissioned to do so by the incorporation agreement. Ownership or any other rights to this capital pass to the corporation on the day it comes into being. Ownership rights to fixed capital is not effected by this provision.

(2) After the company comes into being, the individual responsible for the account is required to transfer it to the corporation without undue delay. If a corporation is not formed, this individual will return the paid-in capital. The other corporation promoters will be jointly and severally responsible that these provisions are fully complied with.

(3) The individual accounting for the capital according to Paragraph 1 above is required to issue a written financial statement on the paid-in capital balance to the individual investors and attach it to the request for registration in the Business Register. An individual who has listed a higher payment in the statement than the payment which was actually made is accountable to the creditors of the corporation for any shortages arising to them.

### Section 61. Shareholding

- (1) A share is the stockholder's portion of interest in business proceeds.
- (2) In the event the withdrawal of a partner from the corporation while the corporation still exists, the partner has the right to collect his share (in settlement). The amount of settlement is based on the annual financial statement for the period during which the partner's participation in the corporation ceased. Unless provided otherwise by law or the contract, the partnership termination is settled in form of cash payment.
- (3) The share settlement becomes due and payable within three months from the approval of the annual financial statement, unless otherwise specified by the incorporation agreement or statutes.
- (4) In the event the corporate dissolution leads to liquidation, a partner has the right to receive his share of the liquidated property (a share in the postliquidation balance).

### Section 62. Creation of a Corporation

- (1) The date of creation of a corporation is the date on which it was entered in the Business Register. The request to be entered in the Business Register must be submitted within 90 days of incorporation (Section 57) or from the date on which the small business permit or another trade authorization was issued.
- (2) If, at the time of incorporation, it is not expressly stated that it is being established for a specific period of time, it is considered to have been established for an indeterminate period of time.

### Section 63

The legal actions related to incorporation, creation, changes, dissolution, or liquidation of a corporation must be in written form; the law stipulates the actions for which notarized entries are required.

### Section 64

- (1) Until such times as the corporation is created, its promoters or any one of them act for the corporation in matters connected with its creation, unless provided otherwise by this law or special regulations.
- (2) With respect to any liabilities assumed by its promoters or by any of them on behalf of the corporation prior to the day of its creation, the promoters are jointly and severally liable.
- (3) Liabilities arising in accordance with Paragraph 1 above pass to the corporation at the time of its creation, except that the corporation retains the right of refusal for three months from the day it come into existence.

### Section 65. Injunction Against Competition

- (1) The corporate statutes determine which individuals and to what extent are subject to injunction against competition [as published].

(2) A corporation is entitled to require that a person who has violated such injunction surrender any gains obtained from the transaction which violated the injunction against competition or that such individual transfer the rights so obtained to the corporation. This provision does not impair the right to demand compensation for damages.

(3) Unless claim is made against the person(s) responsible, the right of the corporation as outlined in Paragraph 2 above expires in three months from the date the corporation learned of this fact, but, at the latest, after one year from the date such fact came into being. This does not impair the right to sue for compensation of damages.

### Section 66

(1) Individuals who are members of statutory or other corporate bodies may resign from their functions. However, they are required to so inform the organization of which they are members or the bodies which elected or appointed them. Their function ceases on the day their resignation is reviewed or was to be reviewed by the bodies which elected or appointed them, unless provided otherwise by the incorporation agreement or statutes. This body is required to review the resignation at the next meeting following the date of resignation, unless otherwise specified by the incorporation agreement or statutes.

(2) The relationships between a corporation and a member of its statutory or other corporate body or a partner at the time the corporate business is being transacted are ruled by provisions on mandated contracts, unless specified otherwise in the papers of incorporation or other provisions of this law.

(3) Unless the law, the statutes, or the incorporation agreement specify otherwise, statutory and other bodies can decide only if a majority of the members present and voting approve. In case of a tie, the presiding officer casts the tie breaking vote. The statutes or the incorporation agreement may authorize a written vote or vote through communications equipment located outside of the meeting room, provided all members of the body involved so agree. Those voting are then considered as being present and voting.

### Section 67. Contingency Funds

(1) Where this law requires the establishment of a contingency fund, it may be used only to cover corporate losses or overcome unfavorable business developments.

(2) The contingency fund must be secured by cash in bank or by other liquid assets.

(3) The corporate profits cannot be distributed until the contingency fund is in compliance with this law, with the incorporation agreement, or the statutes.

### Section 68. Dissolution and Termination of a Corporation

- (1) A corporation ceases to exist on the day it is expunged from the Business Register (Section 31, Paragraph 3).
- (2) The termination of a corporation is either preceded by a liquidation or it is accomplished without liquidation if

its assets pass to a legal successor. Liquidation is also not required in the event a request for protection under bankruptcy law is not accepted due to a insufficient assets or if the bankruptcy proceedings would leave the corporation without assets.

(3) A corporation is dissolved fro following reasons:

- a) due to expiration of the duration for which it was established;
- b) due to achieving the purpose for which it was established;
- c) on the date decided on by the partners or by a corporate officers as the date of dissolution of the corporation; otherwise, on the day this decision was adopted;
- d) on the day decided by the court for the dissolution of the corporation; otherwise, on the day this decision takes on legal force;
- e) by decision of the partners or the responsible officers to merge, consolidate or split up the corporation or convert it into another form of corporation or a cooperative; or
- f) on declaration of a bankruptcy or a dismissal of a request for bankruptcy protection due to inadequate assets to be liquidated.

(4) If the request for bankruptcy protection is dismissed for any reason other than the lack of assets of a corporation, then the corporation is not considered to have been dissolved. Any assets remaining upon the conclusion of the bankruptcy proceedings are liquidated.

(5) Unless the jurisdiction of a statutory agency passes to the liquidator or the bankruptcy administrator, the statutory agency retains its jurisdiction only to the extent necessary to carry out the liquidation.

(6) The court may decide to dissolve a corporation and to have it liquidated upon the recommendation of a government agency or a person having a legal interest, provided that:

- a) no general meeting has been held during the preceding two years or if corporate officers whose terms of office expired more than two years ago have not been replaced or if a corporation has not engaged in any business activities for a period of more than two years;
- b) a corporation loses the authorization to engage in business activities;
- c) the legal prerequisites required for incorporation become extinguished or if the merger, consolidation of the corporation violates the law;
- d) a corporation fails to maintain a contingency fund;
- e) a corporation violates the provisions of Section 56, Paragraph 3.

(7) Prior to deciding on a dissolution of a corporation, the court may set a deadline to repair the cause for which it is being dissolved.

#### Section 69. Dissolution of a Corporation Without Liquidation

(1) In the event of the voluntary dissolution of a corporation, a decision can also be made to convert to another type of corporation or cooperative, or to merge or consolidate or, alternatively, break up the corporation. This does not alter special laws provision.

(2) In the event a corporation is converted, the existing corporation is terminated without liquidation, provided that on the day the application to have the corporation expunged from the Business Register all requirements for a new incorporation or cooperative formation have been met. A request for entry of a new corporation or cooperative in the registry must be submitted together with the proposal to have the dissolved corporation expunged from the record. The expunging of a dissolved corporation and recording of a new corporation or cooperative is handled by the court of registry on the same day. If the conditions for such registration are not met, the dissolved corporation is liquidated. As a result of a conversion of a corporation, the assets of the dissolved corporation pass to the new corporation or cooperative.

(3) In the case of a consolidation, the assets of the terminated corporations passes to the corporation which comes into being as a result of the consolidation; in cases involving a merger, the assets of the terminated corporation pass to the new corporation with which it was merged.

(4) In the case of a corporate breakup, the capital of the terminated corporation passes to the newly formed corporations. Each of the corporations resulting from a breakup assumes the liabilities which have been passed by the terminated corporation to the new corporations up to the level of net assets passed to the corporation from the terminated one. If the decision on the breakup does not specify the corporation to which the liabilities pass, each corporation is jointly and severally liable. The corporations shall agree among themselves as to the ratio at which net assets were passed to them by the terminated corporation.

(5) The corporations being terminated shall be expunged from the Business Register and the corporation(s) resulting from a consolidation or from the breakup shall be entered in the Business Register on the same day. The expungement of a consolidated corporation and the entry pertaining to the changes related to the termination of a merged corporation is also made on the same day.

(6) Each of the partners of the terminated corporation acquires assets in the property of the new corporation or cooperative equal to his share assets in the existing corporation, unless the contract to terminate the corporation provides for another solution.

#### Section 70. Liquidation of a Corporation

(1) If the total assets of a corporation did not pass to its legal successor (Section 69), liquidation is carried out in accordance with this law, unless otherwise provided by a special law for a property settlement.

(2) A corporate liquidation is recorded in the Business Register. During the liquidation, the corporate trade name remains in use, with an added statement indicating that it is "in liquidation."

(3) As a result of the recordation of a corporate liquidation in the Business Register, the statutory agency of the name of the corporation passes to the liquidator who is registered in the Business Register, within the framework of Section 72. If more than one liquidator is appointed and unless otherwise indicated, each of the liquidators acts as agent of the corporation.

### Section 71

(1) The liquidator is appointed by a statutory agency of the corporation, unless the law, the corporate agreement, or the corporate statutes state otherwise. If a liquidator is not duly appointed, the court will appoint one. Only a private individual can be a liquidator.

(2) In the event a corporation is being liquidated on the basis of a court decision, the liquidator is appointed by the court which rendered the decision to dissolve the corporation.

(3) In the event a liquidator dies or gives up his agency, or if he cannot perform his duties, a new liquidator is appointed by the same method which was used to appoint the preceding liquidator and that individual is recorded in place of the existing liquidator in the Business Register. The courts appoint a new liquidator if the authority to do so in accordance with Paragraph 1 above does not do so without undue delay.

(4) Regardless of the method of appointing a liquidator, the court may, at the suggestion of the individual who can document that he has a legal interest in the matter, recall a liquidator who is in violation of his duties and replace him with another individual.

(5) Liquidators are accountable for carrying out their duties in the same manner as is applicable to members of statutory agencies.

### Section 72

(1) A liquidator only carries out actions required for the purposes of liquidation of a corporation in the name of the corporation. In this function, he liquidates the obligations of the corporation, the accounts receivable and the accounts payable, represents the corporation before the courts and other agencies, arranges for conciliation and agreements concerning changes and the termination of rights and obligations. He may conclude new agreements only in conjunction with terminating pending commercial transactions.

(2) In the event a liquidator finds that the corporation is saddled with excessive debt, he shall, without undue delay, submit a request for protection under the bankruptcy law.

### Section 73

A liquidator shall notify all known creditors that the corporation is in liquidation. He is required to publish the notification that the corporation has entered upon liquidation, along with a notification to corporation's creditors and other individuals and agencies upon whom this development impacts to submit their claims or any other rights they are entitled to within a deadline which must not be less than three months.

### Section 74

The liquidator shall compile a final financial statement as of the day on which the corporation has entered upon liquidation and recommend the intended distribution of net corporate assets to each shareholder.

### Section 75

(1) The liquidator shall compile another financial statement as of the day the liquidation is terminated and shall submit it to the partners for approval, together with a final report on the course of the liquidation and a proposal to distribute the remaining assets resulting from the liquidation (after all claims have been satisfied) among the partners.

(2) The shareholders cannot lay claim to any part of the liquidated assets until the claims of all known creditors of the corporation have been satisfied.

(3) In the event a claim is in dispute, it is possible to distribute the liquidated assets only after the creditor's claims have been secured.

(4) Within 30 days following the completion of a liquidation, the liquidator shall present, to the court of registry, a recommendation to have the corporation name expunged from the Business Register.

(5) The liquidator's remuneration is determined by the corporate agency which appointed him. In the event a liquidator has been appointed by the courts, that court shall determine his remuneration.

## Article II. Partnership

### Article 1. Basic Provisions

#### Section 76

A partnership is a company in which a minimum of two shareholders engage in commercial activities under a common trade name and retain responsibility for all company liabilities jointly and severally with all invested and private assets.

#### Section 77

The trade name must contain the designation "partnership," which may be substituted by the abbreviation "ver. obch. spol." or "v.o.s." [unlimited liability]. If the trade name contains the surname of at least one of the partners, the suffix "a spol." [and company] is sufficient.

**Section 78**

(1) The company agreement must contain the following data:

- a) the trade name and headquarters;
- b) titles held by the partners and headquarters of the legal entity or the name and domicile of a private individual;
- c) the company business.

(2) The request for entry in the Business Register shall be signed by all partners and the company statutes shall be attached to it.

**Segment 2. Rights and Obligations of Partners****Section 79**

The rights and obligations of the partners are governed by the partnership agreement. Changes in the agreement require the approval of all partners, provided this law or the partnership agreement do not specify otherwise.

**Section 80**

- (1) Monetary and nonmonetary deposits of the partners become the property of the corporation. A partner is obligated to pay his share within the time limit stipulated in the partnership agreement; absent that provision, he shall pay without undue delay following the establishment of the company.
- (2) In case of overdue payment on his share, the partner is required to pay late interest charges of 20 percent of the amount owed, unless otherwise established by the partnership agreement.
- (3) A partner is not required to increase his capital over and above the value stated in the partnership agreement, nor is he required to augment this value in the event of losses, unless otherwise provided by the agreement.

**Section 81**

- (1) Each partner may manage the company within the principles agreed on between them.
- (2) If the partners to agreement entrust the management of the company, in part or in whole, to one or more partners in the partnership agreement, the remaining partners lose their entitlement to the same extent. The commissioned partner is required to accommodate the decisions of the majority of voting partners. If the partnership agreement does not specify otherwise, then each partner has one vote.
- (3) Unless otherwise specified, the main partner's commission may be recalled with the concurrence of other partners. In the event the main partner is substantially in violation of his obligations (Section 345, Paragraph 2), then the court shall deprive him of his authority at the request of any of the partners, even though the mandate may be irrevocable according to the agreement. In such a case, Paragraph 1 applies until such times as the partners agree on a new mandate.

- (4) The main partner of a company is required, when asked to do so, to inform the remaining partners regarding all company matters. Each partner is entitled to examine all company documents.

**Section 82**

- (1) Profits intended for distribution are distributed in equal shares among the partners. The share in the profits, determined on the basis of the annual financial statement, is payable within three months of the date of approval of the financial statement.
- (2) If profits are shared equally among the partners, the partners are entitled to return on their investment at a rate agreed upon by contract; otherwise, they are entitled to interest in accordance with Section 502. The entitlement to such interest takes priority over an entitlement to a share in profits according to Paragraph 1 above and comes into being even in the event that a financial statement shows that a loss has occurred.
- (3) A loss shown in the financial statement is borne equally by both partners.
- (4) The provisions of Paragraphs 1 through 3 above shall apply, provided the partnership agreement does not specify otherwise.

**Section 83**

By changing the partnership agreement, another partner may join the company or a partner may leave the partnership, provided at least two partners remain.

**Section 84. Agreements To Not Compete**

Without the approval of other partners, a partner may not engage in business activities which are engaged in by the company in which he is a partner, even for the benefit of other individuals. The partnership agreement may regulate this noncompete requirement differently.

**Section 85. Juridical Relations With Third Parties****Section 85**

Each of the partners is an agent of the company, provided the partnership agreement does not require a joint action. When only certain partners are empowered to act in the name of the company regarding all its affairs by the terms of the partnership agreement, only those partners are full agents of the company.

**Section 86. Partnership Liability****Section 86**

A partnership is liable for its obligations with all of its property. The partners are jointly and severally responsible for the company's liabilities with all of their properties.

**Section 87**

- (1) A partner who joins a company also assumes responsibility for liabilities of the company which came into being prior to his joining. However, he can require the other partners to compensate him for this liability and any related expenses.

- (2) If the participation of a partner lapses while the company is in existence, he is only responsible for those liabilities which came into being prior to the dissolution of his participation.

#### **Article 4. Dissolution and Liquidation of a Company**

##### **Section 88**

(1) Other than cases listed in Section 68, a company may be dissolved for the following reasons:

- a) if the agreement was for an indefinite period, as a result of notice given by a partner at least six months prior to the end of the calendar year, provided the partnership agreement does not provide otherwise;
- b) by decision of the courts in accordance with Section 90;
- c) as a result of the death of one of the partners, unless the partnership agreement permits an heir to become a partner and that heir asks to join as a partner and provided at least two partners remain in the company;
- d) as a result of a termination of a legal entity that is one of the partners;
- e) due to a request for protection under the bankruptcy law involving the property of one of the partners or as a result of the rejection of a request for protection under the bankruptcy law for lack of assets;
- f) if agency of one of the partners is withdrawn, or if that agency is subject to certain restriction;
- g) for other reasons provided for in the partnership agreement.

(2) In the event of the dissolution of a corporation for reasons listed in Paragraph 1, Letters a, c, d, e, and f, the remaining partners may, by changing the their contract, agree that the company shall continue to exist without the partner who was the cause for dissolution.

##### **Section 89**

In cases enumerated in Section 88, Paragraph 2, the former partner or his heirs or his legal successor acquires a claim against the company for a liquidation of his share. This share is determined the same way as in case of final settlement (Section 92).

##### **Section 90**

In the event one of the partners violates the partnership agreement in a substantial manner, the courts can order the dissolution of the company upon the request of another partner.

##### **Section 91. Death of a Partner**

(1) In the event a company is not dissolved as a result of the death of a partner, the heir may apply for membership in the company within one month of the date on which the inheritance settlement is made. By filing the application, the heir inherits the rights and obligations of the deceased partner as of the day of his death. The application must be in written form and the signature of the heir must be notarized.

(2) An heir who does not apply for membership in the company has the option of requesting a settlement his share according to Section 89 above.

(3) If more than one heir inherits the share of the deceased partner, the appropriate provisions of Paragraphs 1 and 2 apply subject to equal inheritance rights by all heirs under these provisions. The share of the deceased partner is divided among the heirs at the ratio in which they share in the inheritance. Those heirs who do not ask to join the partnership shall receive a settlement for the share of the deceased partner commensurate with their inheritance entitlements. Heirs who apply to join the company become partners. Their share is determined by the amount of the settlement to which the deceased partner is entitled and which devolves on them as a result of their inheritance.

##### **Section 92. Partnership Settlements**

(1) In the event a corporation is dissolved and liquidated, the partners are entitled to their share liquidation proceeds. The final settlement is first distributed among the partners on basis of their invested capital. Any excess assets are shared equally among the partners.

(2) In the event the liquidated assets are not sufficient to return the invested capital, they is shared by the partners at a ratio commensurate with their investment.

(3) The partnership agreement may regulate the liquidation proceeds distribution in another manner.

#### **Article III. Limited Partnerships**

##### **Segment 1. Basic Provisions**

##### **Section 93**

(1) A limited partnership is a business organization in which one or more partners are responsible for the company liabilities to the full extent of the obligated capital recorded in the Business Register (limited partners) and one or more partners who are liable to the full extent of their invested and private assets (general partners).

(2) Unless provided otherwise, the provisions of this law pertaining to partnerships are applicable to limited partnerships and the legal standing of limited partners is regulated by provisions governing companies with limited liability.

##### **Section 94**

The partnership agreement must contain the following data:

- a) the trade name and seat of the partnership;
- b) the partnership designation by company name and the seat of the legal entity or the name and domicile of a private individual;
- c) the type of business engaged in;
- d) a designation of general partners as general or limited partners;
- e) the amount of capital invested by each partner.

**Section 95**

The company trade name must contain the designation "limited partnership" (komanditni spolecnost); however, the abbreviation "kom. spol." or "k.s." will suffice. If the trade name includes the name of a limited partner, that limited partner becomes responsible for the liabilities of the company to the same extent as the general partner.

**Section 96**

The request to record a limited partnership in the Business Register will be signed by all partners and the partnership agreement will be appended.

**Article 2. Rights and Obligations of Partners****Section 97**

- (1) Only general partners may manage the company.
- (2) Other subjects, will be decided by the general and limited partners jointly by a majority vote, unless otherwise provided by the partnership agreement.
- (3) Each partner has one vote, unless provided otherwise by the partnership agreement.
- (4) To change a partnership agreement, the approval of all partners is required. The partnership agreement may authorize transfer of a limited partner's share to another individual without the approval of other partners. The provisions of Section also 115 apply.

**Section 98**

A limited partner is entitled to audit the company accounts and supporting documentation and is entitled to receive a copy of the annual financial statement.

**Section 99**

Limited partners are not subject to the noncompete limitations, unless the partnership agreement specifies otherwise.

**Section 100**

- (1) The profit distribution between limited partners and general partners will be according to a ratio established by the partnership agreement. Absent such agreement, one-half of profits are distributed to each type of partnership.
- (2) Unless otherwise provided by the partnership agreement, general partners shall divide the profits equally and the limited partners according to the amount invested.

**Segment 3. Legal Relationships  
With Third Parties****Section 101**

- (1) The general partners are the statutory agents of the company. Unless provided otherwise by the partnership agreement, each general partner may act independently on behalf of the corporation.
- (2) A limited partner acting as agent is responsible for any contractual obligations which he has concluded in the name of the company to the same extent as the general partner.

**Segment 4. Dissolution and Liquidation  
of a Partnership****Section 102**

- (1) The death of a limited partner, a the loss or limitation of his suitability to perform legal acts, bankruptcy proceedings involving his property, or the rejection of a request to file for bankruptcy for illiquidity are not reasons for dissolving a partnership. Nor will the company be dissolved as a result of the termination of a legal entity which is also a limited partner.
- (2) Upon filing for bankruptcy protection for property of a limited partner or upon rejection of such filing due to illiquidity, the limited partner's participation is terminated and his claim for settlement becomes part of the bankruptcy basis.

**Section 103**

In the event the participation of all limited partners is terminated, the general partners can decide to change the limited partnership without liquidation to a partnership. Provisions of Section 69 are unaffected by this decision.

**Section 104**

- (1) When a partnership is dissolved and liquidated, all partners are entitled to a share of the liquidation proceeds. Each partner is entitled to have the amount of paid-in capital returned to him. If the liquidation proceeds are inadequate for a full refund, the limited partners have a priority claim to their capital. The rest of the liquidation proceeds, after the assets have been divided among the partners, is divided in accordance with the same principles as the distribution of profits.
- (2) If the liquidation proceeds are insufficient to make the distribution discussed in Paragraph 1 above, it shall be divided among the partners in accordance with the same principles that govern the distribution of profits.
- (3) The partnership agreement may provide for another method of distribution of the liquidation proceeds among the partners.

**Article IV. Subchapter S Corporations****Segment 1. Basic Provisions****Section 105**

- (1) A subchapter S corporation is a corporation in which the capitalization is consists of predetermined investment capital paid-in by the partners.
- (2) Such corporation may be established by a single person.
- (3) Such corporation may have a maximum of 50 shareholders.

**Section 106**

The corporation is responsible for a violation of its obligations with its total assets. A shareholder is liable for the obligations of the corporation to the extent of capital not paid-in but recorded as such in the Business Register.

Meeting corporate obligations based on warranty is considered to be a part of paid-in capital; otherwise, a partner may demand compensation from the corporation. In the event he cannot obtain such compensation, he may demand compensation from each of the partners to the extent of their obligated capitalization of the corporation.

### Section 107

The corporate trade name must contain the designation "incorporated;" however, the abbreviation "spol. s r.o." or "s.r.o." [inc.] is sufficient.

### Section 108

(1) The minimum capitalization to form a corporation must be 100,000 korunas [Kcs].

(2) Any claim by the corporation to the payment of capital investment which has not been paid-in by a partner and any claim by a partner against the corporation, with the exception of those under Section 106, are mutually exclusive.

### Section 109

(1) The minimum capital paid-in by each partner must Kcs20,000.

(2) Each partner may participate in establishing the corporation with only one payment. The amounts of investment may be established differently for individual partners, but must be divisible by 1,000. The total paid-in capital must correspond to the capitalization of the corporation.

(3) If nonmonetary investment are to be made, the corporate agreement must describe the method by which its cash value was determined and the amount which is credited on account of the partner in question.

### Section 110

(1) An incorporation agreement must contain the following data:

- a) the trade name and seat of the corporation;
- b) identification of the partners by giving name and address of a legal entity or the name and address of a private individual;
- c) the object of the undertaking (activity);
- d) the capitalization and the amount of investment by each partner in incorporation, including the means and deadline for the cash payment and, in case of nonmonetary investment, the description;
- e) the name and address of the first corporate agents and the extent of their agency;
- f) the name and address of the members of the first board of directors, provided one is being established.

(2) The incorporation articles may provide for issuance of bylaws on corporate organization and other rules reflecting the articles of incorporation.

### Section 111

(1) Prior to submitting a request for recording a corporation in the Business Register, a minimum of 30 percent of capital must be paid-in by each partner. However, minimum of paid-in capitalization, including the value of invested nonmonetary assets, must be Kcs50,000.

(2) In the event a corporation is established by a single founder, it may be registered in the Business Register only if all of its capitalization has been paid-in.

### Section 112

(1) The request to record a corporation in the Business Register is to be signed by all shareholders.

(2) In addition to documents identified in Section 31, Paragraph 2, the following are to be attached to the request to record in the Commercial Register:

- a) the articles of incorporation or agreement or bylaws;
- b) documentation that the requirements under Section 111 have been met.

## Article 2. Rights and Obligations of the Partners

### Section 113

(1) A partner is required to pay-in the capital under conditions and within the deadlines established in the articles of incorporation or bylaws but, at the latest, within five years from the formation of the corporation or from the time he joined the corporation. A partner cannot be exempt from this requirement. The agents of the corporation shall notify the court of registry without delay that each partner has paid-in his share of capital.

(2) A partner who, within the time limit specified in Paragraph 1 above, fails to pay the amount of investment required will be assessed late charges of 20 percent on the unpaid portion, unless otherwise provided by the incorporation articles or bylaws.

(3) If a partner is late in his payment, the corporation may, under the threat of expulsion, require him to meet his obligation within a time limit of not fewer than three months.

(4) A partner who fails to meet his obligations even after the additional time may be dropped from the corporation by action of a special meeting of the shareholders.

(5) The corporation may transfer the business share (Section 114) of an expelled partner to another partner or a third party. The transfer is decided by the stockholders' meeting.

(6) If a transfer of the business share according to Paragraph 5 above does not take place, the stockholders' meeting shall either reduce capitalization of the corporation by the amount of investment due from the expelled partner or it shall decide that remaining partners assume the investment at the ratio commensurate with their own shares of business; a settlement with the expelled partner may not be accomplished at the expense of capitalization.

**Section 114**

(1) The business share represents the rights and obligations of a partner and his participation in the corporation. Its size is determined in accordance with the investment-to-capitalization ratio of the specific partner. Unless otherwise specified by the incorporation agreement

(2) Each partner may have only one business share. If he increases his investment, his share of business is increased at a ratio reflecting the size of the additional investment.

(3) One unit of ownership may be shared by several individuals. These individuals may exercise their rights based on this share of business only through a common representative and are jointly and severally liable for paying-in the stated investment.

**Section 115**

(1) With the approval of the general shareholders' meeting, a partner may contractually transfer his business share to another partner, provided the partnership agreement does not specify otherwise.

(2) If the partnership agreement permits, a partner may transfer his share to another person, but guarantees that the person acquiring that share will make the required investment.

(3) The contract regarding the transfer of the business share must be in writing and the acquiring individual must declare that he accedes to the partnership agreement or statutes. His signature must be notarized.

(4) The consequences of transferring the share according to Paragraphs 1 and 2 above accrue to the corporation as of the day the contract to transfer is delivered.

**Section 116**

(1) As the result of the termination of a legal entity, who is a partner, the business share passes to its legal successor. The incorporation agreement may exclude the transfer of the business share to a legal successor.

(2) On the death of a partner, the business share passes to his heir, provided this is authorized by the incorporation agreement and the heir applies for membership in the corporation within one month following the conclusion of the inheritance proceedings. By his application, the heir acquires the business share as of the day of the death of the testator.

(3) In the event the business share does not pass to an heir or a legal successor, the provisions of Section 113, Paragraphs 5 and 6, apply.

**Section 117**

(1) Splitting of a business share is possible only upon its transfer or passage to an heir or a legal successor of the partner. The division of a business share requires the approval of the general shareholders' meeting.

(2) The incorporation agreement may exclude splitting of business shares.

(3) In dividing the business share, the amount of investment specified in Section 109, Paragraph 1, must be preserved.

**Section 118**

A changes in partnership are recorded in the partnership listing and in the Business Register. Through this record, the liability of the former partner for the obligations of the corporation is transferred to the person acquiring the share of business.

**Section 119**

In the event all business shares end up in the hands of a single partner, the partner is obligated to pay off the totality of all monetary deposits within three months of the time the commercial shares are combined or must transfer part of the share to another individual. In the event the partner violates this requirement, the court shall dissolve the corporation, even without a request to do so, and order its liquidation.

**Section 120**

A subchapter S corporation cannot acquire its own shares.

**Section 121**

(1) The corporate agreement may specify that the stockholders meeting is authorized to require the partners to contribute, for purposes of compensating for the losses of the corporation, cash exceeding the deposit up to one-half of capitalization, according to the size of their investment. Violations of this requirement are regulated by provisions of Section 113, Paragraphs 2 through 4.

(2) Fulfillment of the obligations listed in Paragraph 1 above has no influence upon the size of the partner's investment.

**Section 122**

(1) The partners exercise their rights pertaining to the management of the corporation as well as to the control of its activities at the stockholders' meeting, to the extent of and by the method listed in the incorporation agreement or statutes.

(2) Partners may require that agents provide information on the affairs of the corporation and to inspect the corporate documents.

**Section 123**

(1) The partners are entitled to a share of the profits at a ratio corresponding to their paid-in capitalization, provided the corporate agreement does not specify otherwise.

(2) The capitalization and the reserve, or assets which, according to this law, the corporate agreement, or the bylaws are to be used for supplementing the cash reserve, may not be used as payout of profits.

(3) For the duration of the corporation, the partners may not require the refund of their investment. Payments to partners related to reducing capitalization are not considered to be a refund of deposits.

(4) Partners are obligated to return any profits paid out in conflict with these provisions. The agents of the corporation who express their approval with this payout shall jointly and severally guarantee this refunding.

#### Section 124

(1) At the time of its formation, a corporation shall establish a cash reserve, the size and method of which is dictated by the corporate agreement, but which must be least 5 percent of capitalization. This reserve is augmented annually by an amount stipulated in the corporate agreement or in the bylaws, but by at least 5 percent of the net profits until such time as it reaches the amount established by the corporate agreement or bylaws, but at a minimum until it reaches 10 percent of capitalization.

(2) Use of the cash reserve is subject to the decision of the agents, in accordance with Section 67.

### Segment 3. Corporate Organization

#### Stockholders' Meeting

##### Section 125

(1) The stockholders' meeting is the highest corporate office. Its jurisdiction includes the following:

- a) cancellation of contracts by the founders prior to the establishment of the corporation;
- b) approval of the annual balance sheet, distribution of profits, and loss compensation;
- c) approval of bylaws and their amendments;
- d) decisions on changes to incorporation agreement (Section 141);
- e) decisions regarding the increase or decrease in capitalization;
- f) the appointment, recall, and remuneration of agents;
- g) the appointment, recall, and remuneration of members of the board of directors;
- h) the exclusion of a partner in accordance with Sections 113 and 121;
- i) decisions regarding the dissolution of a corporation, provided the corporate agreement so permits;
- j) other questions entrusted to the jurisdiction of the stockholders' meeting by law, by the corporate agreement, or by the corporate statutes.

(2) As long as the corporate agreement or by laws do not specify otherwise, the stockholders' meeting also makes decisions regarding the appointment and recall of the authorized proxy.

(3) The stockholders' meeting may reserve for itself any decisions pertaining to matters which would otherwise fall under the jurisdiction of other corporate offices.

#### Section 126

A partner shall participate in the stockholders' meeting in person or shall be represented by an agent on the basis of

a written proxy. The agent may not be an officer of the company or a member of the board of directors.

#### Section 127

(1) The stockholders' meeting is considered to have a quorum if partners representing at least one-half of all votes are present.

(2) Each partner has one vote for every Kcs1,000 of his investment, provided the bylaws or incorporation agreement do not specify a different number of votes.

(3) The stockholders' meeting makes decisions on the basis of the simple majority of the votes of shares present and voting, unless the law or the corporate agreement require a larger number of votes.

(4) Decisions to be made in accordance with Section 125, Paragraph 1, Letters a, c, d, e, and i, always require the approval of at least a two-thirds majority of all voting shares.

#### Section 128

(1) Unless the law, a partnership agreement, or bylaws specify a shorter time limit, the stockholders' meeting shall be called at least once each year.

(2) The officers are obligated to convene the stockholders' meeting if the reserve declines to below one-half of the value since the last stockholders' meeting.

#### Section 129

(1) The timing of the stockholders' meeting and the agenda must be communicated to the partners at least 15 days prior to the time the meeting is held and must be in writing, unless the partnership agreement states otherwise.

(2) Partners, whose investment exceeds 10 percent of capitalization, may request the convening of the stockholders' meeting. In the event that the officers do not call a stockholders' meeting within one month of the time these partners have submitted their requests, the partners are authorized to convene such meeting themselves.

#### Section 130

The shareholders may take decisions even outside of the stockholders' meeting. In such a case, the proposal is presented to the partners, along with the announcement of the time they have to make a written comment. If a partner does not comment within the time limit specified, he is considered to have expressed his disapproval. The officer then notify the individual partners of the results of the voting. A majority is computed on the basis of the overall number of votes held by each partner.

#### Section 131

(1) Every shareholder, officer, or member of a corporate board of directors may ask the courts to declare a resolution by the stockholders' meeting to be invalid within three months, if it is in conflict with legal regulations, with the partnership agreement, or the bylaws.

(2) In the proceedings, the officers act for the corporation; however, if they are the only party to these proceedings,

the corporation shall be represented by a designated member or members of the Board of Directors. If both the officers and members of the Board of Directors are the plaintiffs, or if no Board of Directors has been established, the corporate representative shall be appointed by the stockholders' meeting. If the stockholders' meeting does not do so within three months of the time the corporation has received the specification of charges, the courts shall appoint a trustee for the corporation.

#### Section 132

If a corporation has a single shareholder, this partner carries out the functions of the stockholders' meeting.

#### Officers

##### Section 133

(1) A statutory agency of the corporation is a single officer or several officers. If there are more officers, each of them is entitled to act in the name of the corporation independently, provided the corporate agreement does not specify otherwise.

(2) Only the corporate agreement, the bylaws, or the stockholders' meeting may restrict the authority of the officers. However, such restrictions are not effective with respect to third parties.

(3) Officers are appointed by the stockholders' meeting from among shareholders or other private individuals.

#### Section 134

Decisions pertaining to corporate management, which is the responsibility of officers, require the approval of the majority of the officers.

#### Section 135

The officers responsible for maintenance of prescribed records and accounts, for maintenance a shareholder record and for informing partners with regard to the affairs of the corporation.

#### Section 136. Conflict of Interest

(1) Provided the corporate agreement or the statutes do not indicate otherwise, an officer may not:

a) conclude commercial transactions in his own name or on his own account if they are related to the business of the corporation;

b) broker corporate business for third parties;

c) participate in the activities of another corporation as a partner with unlimited liability; and

d) engage in activities as a statutory agent or a member of a statutory or other organization or legal entity, whose business is similar to that of the corporation, unless the corporation in which he is an officer participates in that undertaking.

(2) Violations of Paragraph 1 have consequences stipulated in Section 65.

#### Board of Directors

##### Section 137

An Board of Directors is established, provided the corporate agreement so specifies.

##### Section 138

A Board of Directors:

- a) oversees the activities of the officers;
- b) audits business and account records and other documents and verifies the data contained therein;
- c) verifies the annual financial statement;
- d) provides notification for the stockholders' meeting within the deadline specified by the corporate agreement; absent such an agreement, once per year.

##### Section 139

(1) Members of the Board of Directors are elected by the stockholders' meeting.

(2) An agent of the corporation may not be a member of the Board of Directors.

(3) The Board of Directors must be made up of at least three members.

(4) Members of the Board of Directors are subject to the conflict of interest provisions (Section 136).

#### Section 140

(1) Members of the Board of Directors are authorized to participate in the stockholders' meeting. They must be given the floor whenever they so request.

(2) The Board of Directors shall convene the stockholders' meeting if the interests of the corporation so require. The convening of the stockholders' meeting is subject to provisions of Section 129, Paragraph 1.

#### Segment 4. Changes in Corporate Agreement

##### Section 141

Any change in the incorporation agreement requires the approval of all partners, unless the law or the corporate agreement entitles the stockholders' meeting to take this action.

#### Capitalization Increase or Decrease

##### Section 142

Increasing capitalization by added investment is authorized only if existing capitalization have been fully paid in. Increasing capitalization with the use of noncash assets is acceptable prior to this time.

##### Section 143

(1) Priority assumption of obligations to make new investments may be used by existing partners as a percentage of their existing shares, provided the statutes or the corporate agreement do not specify otherwise.

(2) In the event partners fail to make use of the priority rights within a time limit specified by the corporate agreement or by the statutes or within one month of the day they were informed of decision to increase capitalization, the obligation to invest may be assumed by anyone with the approval of the stockholders' meeting.

(3) The obligation to make a new investment is assumed in writing in which the interested party must state that he or she accedes to the corporate agreement; the signature of the interested party must be officially verified.

#### Section 144

Stockholders' meetings may decide to increase capitalization, using excess corporate assets. This results in increasing the size of the investment of each partner at a ratio reflecting their existing investments.

#### Section 145

Agents are obligated to submit a proposal for recordation of the increased capitalization in the Business Register without undue delay.

#### Section 146

The stockholders' meeting makes decisions regarding the reduction of capitalization. The value of capitalization of a corporation and the size of the investment of each partner may not be reduced below the level stipulated in Section 108 and Section 109, Paragraph 1.

#### Section 147

(1) The agents are obligated to publish any reduction in capitalization and provide information on its amount within 15 days following the decision by publishing this information twice in succession at 30-day intervals. In the announcement, the creditors of the corporation are asked to come forward with their claims within 90 days following the last notification.

(2) The corporation is required to provide appropriate security to creditors who have presented their claims on time or to satisfy these claims.

(3) A reduction in capitalization is recorded by the court in the Business Register only if it is proven that the reduction of capitalization was published in accordance with Paragraph 1 above and creditors have received a security according to Paragraph 2, when their claims have not been satisfied.

#### Termination of a Partner's Participation in a Corporation

#### Section 148. Court-Ordered Termination of a Partner's Participation

(1) A partner may not leave a corporation, but may request that a court terminate his participation in the corporation

if it is not possible to hold him legally to remaining in the corporation. The provisions of Section 113, Paragraphs 5 and 6, apply.

(2) The filing for bankruptcy protection, involving the property of a partner or a rejection of the proposal to file for bankruptcy for the lack of assets has the same effect as the termination of his participation in the corporation by court order.

#### Section 149. Expulsion of a Partner

A corporation may ask the court to expel a partner who is violating his obligations in a serious manner despite the fact that he has been requested to perform his duties and was notified in writing of the possibility of his expulsion. The submission of this proposal is subject to the approval by cash partners whose investments represent at least one-half of the capitalization. The provisions of Section 113, Paragraph 4, are not affected. The provisions of Section 113, Paragraphs 5 and 6, do apply.

#### Section 150. Settlement

(1) A partner whose participation in the corporation was terminated by court order or who was expelled acquires the right to a settlement share (Section 61, Paragraphs 2 and 3). Similar rights accrue to an heir or a legal successor of the partner, provided a similar share has not passed to this individual (Section 116).

(2) The settlement share is computed on the basis of the ratio between the investment made by the partner whose participation in the corporation is being terminated and the paid-in investments of all partners, provided the corporate agreement does not specify otherwise.

#### Segment 5. Dissolution and Liquidation of a Corporation

#### Section 151

In addition to cases listed in Section 68, a corporation may be dissolved:

- by court order according to provisions of Section 152;
- for other reasons listed in the corporate agreement.

#### Section 152

The partners may petition the court for dissolution of a corporation for reasons and under conditions stipulated in the corporate agreement.

#### Section 153

(1) Prior to initiating the liquidation of a corporation, the stockholders' meeting shall appoint a liquidator.

(2) In the event a corporation is dissolved and liquidated, each partner has the right to a share in any residual liquidation assets. This share is determined by the ratio between the investment made by the individual partner and the investments of all partners, provided the corporate agreement does not specify otherwise.

**Article V. Corporations****Segment 1. Basic Provisions****Section 154**

(1) A corporation is an organization whose capitalization involves a specific number of shares of a specific nominal value. The corporation is liable with its entire property. A stockholder is not responsible for the corporate liabilities.

(2) The trade name of a corporation must contain the designation "corporation" (akciová společnost) or the abbreviation "akc. spol." or "a.s."

**Section 155**

(1) A stock certificate is a security issued to a stockholder and entitling him to participate as a partner in accordance with this law and the corporate bylaws in the management of the corporation, to share in its profits and in liquidation proceeds if the corporation fails.

(2) A stock certificate must contain the following information:

- a) the trade name and corporate headquarters;
- b) the serial number of the stock certificate and its nominal value;
- c) an indication whether the stock certificate is made out to the bearer or to a specific name; a stock certificate made out in a person's name must contain the name of the stockholder;
- d) stock capitalization and the number of shares existing at the time the securities are issued;
- e) the date of issue and the signatures of two members of the Board of Directors who are authorized to sign for the corporation.

(3) The securities may have differing values. If several types of securities are issued, the security must contain the designation of the type of security and the attached to them, as a minimum, reference to the corporate bylaws.

**Section 156**

(1) A stock certificate may be made out in the name of an individual or to a bearer. The statutes may establish the right of stockholders to trade their stock certificates, which are made out in their names, for bearer certificates, and vice versa; this does not apply to employee stock certificates (Section 158, Paragraph 3).

(2) Stock certificates made out to bearer are transferable and the rights attached with them accrue to the holder.

(3) A stock certificate made out in the person's name is transferable and the transfer is accomplished by endorsement and by physically transferring the certificate. The endorsement shall list the name and headquarters of a legal entity or the name and domicile of a private individual who is acquiring the stock certificate and the day on which the transfer is effective. Endorsements are also subject to exchange regulations. The corporate bylaws may restrict the transferability of stock certificates.

(4) With respect to stock certificates made out in the name of an individual, the corporation shall maintain a listing of stockholders which shall include the appellation and seat of a legal entity or the name and domicile of a private individual who is the stockholder. To implement transfer of stock certificates made out in specific names, the corporation is required to make an entry in the listing of stockholders regarding the transfer of stock certificates. At the request of a stockholder, the corporation is required to provide him with an extract from the list of stockholders pertaining to him.

(5) Stock certificates made out in the name of an individual can list the names of two or more persons. The rights connected with the stock certificate may be exercised by any one of them or by an individual empowered by them to act for them.

**Section 157**

The bylaws must include the nominal values of all types of stock certificates which are to be issued. The cumulative total of these nominal values must correspond to their capitalization.

**Section 158**

(1) The statutes may call for the issuance of employee stock certificates with certain related benefits.

(2) The cumulative total of all nominal values of such employee stock certificates, which need not be paid for, must not exceed 5 percent of capitalization.

(3) Employee stock certificates are made out in the name of the individual and may be transferred only among current or retired employees of a corporation.

(4) In the event of death of an owner of an employee stock certificate or upon the termination of his employee status, other than his departure for reasons of retirement, any rights inherent in the employee stock certificate become extinguished and the stock certificate is returned to the corporate treasury. As long as the statutes do not specify otherwise, the corporation shall pay the nominal value of this returned stock certificate or, in the event the returned stock certificate is quoted on the stock exchange, the quoted value of the corporate stocks. The statutes can specify that the entire value is to be paid in the event of the death of an employee.

(5) The detailed procedures involved in the acquisition, transfer, and return of employee stock certificates shall be contained in the statutes.

(6) As long as this law or the statutes do not indicate otherwise, the owners of employee stock certificates enjoy the same rights as do other stockholders.

**Section 159**

(1) The statutes may rule the issuance of stock certificates with attached priority rights related to the payment of dividends (preferred stocks), provided the sum total of their nominal value does not exceed one-half of capitalization.

(2) The issuance of stock certificates involving rights to a certain amount of interest regardless of corporate financial situation is not authorized.

(3) The statutes can decree the issuance of preferred stock which involve no voting rights at stockholders' meeting meetings. Their owners have all other rights related to stock certificate ownership. The statutes or the stockholders' meeting may, however, exclude or restrict their rights to subscribe to newly issued stock certificates. If the preferred dividend is not paid, the stockholder of a preferred stock certificate acquires voting rights which are good until the time the dividend payments are resumed.

(4) In judging the jurisdiction of the stockholders' meeting to make decisions and vote on issues, the stock certificates without voting rights are disregarded.

#### Section 160

(1) The statutes may decree that a corporation may, on the basis of the decisions of its stockholders' meeting, issue bonds valued at up to one-half of its capitalization with the right to demand that stock certificates be issued within the time specified in the bonds or with the preemptive right to purchase stock certificates at a nominal value stated in the bond [convertible bonds]. Upon expiration of this time limit, the bond reverts to regular bond with payment of principal and interest stipulated.

(2) The issuance of bonds does not affect the capitalization of the corporation and does not involve any stockholder rights.

(3) Bonds are subject to special regulations.

#### Section 161

(1) A corporation may not subscribe to stock certificates that create its capitalization. It may acquire stock certificates that it has previously issued only in cases in which:

a) it becomes the legal successor to all rights and obligations of the individual who owned these stock certificates;  
b) it buys back employee stock certificates or  
c) in the event capitalization is being reduced or increased in accordance with this law and with the statutes;  
d) a gift or an inheritance is involved.

(2) In the acquisition of stock certificates as outlined in Paragraph 1 above, a corporation may use only that portion of its assets which exceeds its capitalization. This restriction does not apply to employee stock certificates.

(3) A corporation may not acquire securities of a corporation which is the sole owner of its stock certificates with the exception of the case listed in Paragraph 1, Letter a, above.

(4) In the event a corporation owns stock certificates which had been issued, it cannot exercise the rights of a stockholder connected with these securities, unless otherwise provided by this law. The same applies to securities acquired in accordance with Paragraph 3 above.

(5) Securities acquired in accordance with Paragraph 1, Letters a and d, above, as well as those outlined in

Paragraph 3 must be sold by the corporation at the latest within three years of the date of their acquisition and if these stock certificates are not sold within that time limit, the corporation is obligated to withdraw these securities from circulation and reduce its capitalization by the nominal value of these securities. Stock certificates withdrawn from circulation must be destroyed.

#### Segment 2. Incorporation of a Company

##### Section 162

(1) A corporation may be established by a single founder, provided the founder is a legal entity; otherwise, it can be established by two or more founders.

(2) In the event two or more founders form a corporation, they shall conclude an incorporation agreement. In the event a corporation is established by one founder, that individual shall sign the founder's listing. The signatures appended to the incorporation agreement and the founder's listing must be notarized. A draft of the corporate bylaws is a part of the incorporation agreement and the founder's listing.

(3) The minimum capitalization of a corporation is Kcs1 million.

##### Section 163. Incorporation Agreement

(1) An incorporation agreement or a founder's listing must contain the following information:

- a) the trade name, headquarters, and type of business (activities);
- b) the proposed capitalization;
- c) the number of shares and their nominal values; if various types of shares are to be issued, their type and the rights attached to them;
- d) the subscription investments of individual founders;
- e) if noncash assets are to be used in capitalization of a corporation, the objective of such assets must be identified and their value documented by a professional estimate.

(2) If a corporation is to be formed on basis of an invitation to subscribe to stock certificates, the incorporation agreement or the founder's listing must further contain the following information:

- a) the time and place designated for subscribing to stock certificates;
- b) the procedure involved in subscribing to stock certificates which exceed the proposed capitalization;
- c) the time and place for paying the subscribed stock certificates and the value of these payments;
- d) the method to be used to convene the constituent stockholders' meeting of subscribers.

#### Incorporating on the Basis of an Invitation To Subscribe to Securities

##### Section 164

(1) The founders ensure capitalization that is to exceed their investments by issuing an invitation to subscribe to securities, which must contain the data required by the incorporation agreement (Section 163).

(2) An invitation to subscribe to stock certificates is published by a suitable method and its content may not be changed until after the unsatisfactory expiration of the time limit set for subscribing to the securities involved.

(3) The proposed statutes must be available for examination at every subscription location.

### Section 165

(1) A stock certificate subscription is accomplished by recording it in the subscriber list. The entry includes the number or possibly the type of securities subscribed to, the amount of investment, along with information as to whether the investment is in cash or noncash asset form, the deadline for settlement on the subscribed securities, the name and location of the legal entity or the name and domicile of the private individuals subscribing, and their signature.

(2) In the event of a noncash investment, the entry shall also contain information regarding the use of that investment and its valuation documented by a professional estimate.

(3) In a cash investments, the subscriber is required to pay at least 10 percent of the nominal value of the subscribed shares to a bank account within time provided by the founders in his prospectus to subscribe. In the event the subscriber fails to meet this obligation, the subscription shall be null and void.

### Section 166

When the subscriptions have reached the proposed capitalization level, the founders may reject any additional subscriptions; if they do not, the decision on acceptance or rejection of subscriptions, which was made following the subscription level proposal of capitalization, will be made by the constituent stockholders' meeting. In the event subscriptions are rejected, the founders are required, jointly and severally and without undue delay, to refund the payment made at the time of subscription to the subscriber.

### Section 167

(1) The subscription to stock certificates is null and void if, by the end of the deadline listed in the invitation to subscribe, the value of subscribed securities fails to reach the stated level of capitalization, unless the securities which are short of this goal are subsequently subscribed to by the founders or by some of them. The subscription of employee shares at the level listed in the incorporation agreement or the founder's listing is not required.

(2) If the subscription becomes null and void, the rights and obligations of the subscribers, based on the subscription to the securities, become extinguished and the founders are required, jointly and severally, to refund to the subscribers any payments made at the time of subscription, without undue delay.

### Section 168

(1) Subscribers are required to pay for the subscribed securities within the time limit stipulated in the prospectus. At least 30 percent of the nominal value of subscribed securities, which are to be covered by capitalization, must be paid by subscribers at the latest by the time the constituent stockholders' meeting meets; this is not required of noncash contributions and employee shares.

(2) Prior to the recordation of the corporation in the Business Register, the founders shall provide the subscriber with a written receipt showing the amount of subscribed investment in cash or in other near cash values and indicate the size of the payment made.

(3) Following the recordation of the corporation in the Business Register, the corporation shall exchange this receipt for a temporary certificate or for a stock certificate if its entire nominal value has been paid.

### Constituent Stockholders' Meeting

#### Section 169

(1) Subscribers who met the requirements of Sections 165 and 168 are entitled to participate in the constituent stockholders' meeting. The founders shall convene the constituent stockholders' meeting within 60 days of the date on which the proposed capitalization has been fully subscribed.

(2) In the event the founders fail to meet the deadline required by Paragraph 1 above, the subscription campaign shall be considered null and void and shall result in the consequences listed in Section 167, Paragraph 2.

#### Section 170

(1) The constituent stockholders' meeting may be held only if securities have been fully subscribed, except for expenses for employee shares, and provided at least 30 percent of the nominal value has been capitalized. The proposed nominal value of employee shares is disregarded.

(2) The constituent stockholders' meeting may be held if at least one-half of subscribers, who have duly paid-in the required amount of the nominal values of those shares. The constituent stockholders' meeting is chaired by a founder representing other founders with their authorization or by his representative, until a chairman of the constituent stockholders' meeting has been elected.

(3) A decision of the constituent stockholders' meeting requires the approval of the majority of subscribers participating in its meeting. A majority decision may determine which cases may require another majority or the unanimous approval of all subscribers present and vote.

#### Section 171

(1) The constituent stockholders' meeting:

- a) decides on incorporation;
- b) approves the corporate bylaws;
- c) elects corporate officers in accordance with the bylaws.

(2) If the constituent stockholders' meeting decides to authorize the subscription to securities over and above the level proposed, it shall decide on the new level of such capitalization. In that case, subscribers who initially subscribed to the securities shall effectively have their level of subscription raised to the new level of capitalization. A subscriber who subscribes to stock certificates over and above the originally proposed level of capitalization acquires voting rights in the event the constituent stockholders' meeting increases the capitalization to include the securities subscribed and the subscriber pays in at least 30 percent of the nominal value of such securities.

(3) On the basis of a professional estimate, the constituent stockholders' meeting shall approve the amount of non-cash contributions. The constituent stockholders' meeting may not set the value of noncash investments higher than the valuation provided in the incorporation agreement or in the founder's listing or higher than the documented professional estimate at the time of subscription.

(4) With the exception of increasing the capitalization, the constituent stockholders' meeting may only deviate from the provisions of the incorporation agreement or the founder's listing with the approval of all subscribers who are present.

(5) The actions of the constituent stockholders' meeting are certified by a notarized entry which, in addition to covering the resolutions, also includes the listing of subscribers, the nominal value of the shares subscribed to by each of them, as well as the size of the paid shares to which they have subscribed and lists the elected officers of corporation.

#### **Establishment of a Corporation Without an Invitation To Subscribe to Its Securities**

##### **Section 172**

(1) In the event that the founders agree in the incorporation agreement that they will pay the entire corporate capitalization proportionately among themselves, an invitation to subscribe to the securities and to convene a constituent stockholders' meeting is not required.

(2) The legal standing of a constituent stockholders' meeting, as a result of the incorporation on the basis of invitation to subscribe to its securities, accrues to the founders. If the founders' agreement does not specify otherwise, decisions require the presence of all founders and the approval of the majority securities subscribers. Decisions taken by the founders must be in the form of a notarized entry.

(3) The provisions of Paragraphs 1 and 2 above also apply in the event a corporation is being established by a single legal entity without an invitation to subscribe to its securities.

##### **Bylaws**

##### **Section 173**

Bylaws must contain the following information:

a) the trade name and corporate headquarters;

- b) the business of the corporation (activities);
- c) the amount of capitalization and the method of paying for shares;
- d) the number and nominal value of shares, as well as information indicating whether the stock certificates are made out in the name of an individual or to a bearer;
- e) the method used to convene the stockholders' meeting, its jurisdiction, and the method by which it takes decisions;
- f) the number of members on the Board of Directors, the Board of Directors, or other officers, as well as the delineation of their jurisdictions and the method by which they take decisions;
- g) the magnitude of the initial reserve fund and the level to which the corporation is obligated to augment this fund, as well as the method of augmentation;
- h) the method used to distribute profit;
- i) the consequences of violating the requirement to settle on subscribed securities on a timely basis;
- j) the method used to increase and decrease capitalization; and
- k) the procedure to be used in amending or changing the bylaws.

##### **Section 174**

As needed, the bylaws shall also regulate the following:

- a) the issuance of various types of securities (for example, employee stock certificates), the type, number, and the rights attached to them; and
- b) rules for issuing bonds in accordance with Section 160, as well as the rights related to issued bonds.

##### **Incorporation**

##### **Section 175**

(1) The court of registry shall record a corporation in the Business Register, provided following actions have been taken in accordance with this law:

- a) a constituent stockholders' meeting met properly, when required;
- b) the entire value of capitalization has been subscribed and at least 30 percent of cash required for capitalization paid in, with the exception of employee securities;
- c) the bylaws of a corporation have been approved;
- d) corporate officers have been elected.

(2) A request for entry in the Business Register has been signed and submitted by the Board of Directors.

(3) The proposal for recordation is accompanied by a copy of the incorporation agreement, and/or the founder's listing, a copy of the approved bylaws, and a notarized entry certifying that the constituent stockholders' meeting has been held. If this law does not require that a constituent stockholders' meeting be held, a notarized statement

on the decision by the founders regarding questions which would normally be discussed at a constituent stockholders' meeting must be appended.

### Provisional Certificates

#### Section 176

(1) Following recordation of the corporation in the Business Register, the corporation shall issue to subscriber(s) a provisional stock certificate.

(2) The provisional stock certificate give the nominal value of the shares subscribed to, identification of the type of shares, and the paid-in nominal value.

(3) A provisional stock certificate is a security made out in the name of a specific person with certain rights based on the securities which will replace the provisional stock certificate. In the event a subscriber transfers an interim stock certificate to another person before paying the nominal value of the shares, he will guarantee that the payment of the full subscribed value of the shares.

(4) In the event the provisional certificate is made out to several individuals, provisions of Section 156, Paragraph 5, also apply. These individuals are required, jointly and severally, to pay the nominal value of these shares.

(5) After payment of the nominal value of the securities represented by the temporary stock certificate, the corporation shall issue a regular stock certificate.

#### Section 177

(1) A subscriber is obligated to pay off the entire nominal value of the subscribed securities within the time limit stipulated in the bylaws, but no later than one year from the time of incorporation, with the exception of employee shares.

(2) If the subscriber violates the duty to pay the nominal value of the securities to which he has subscribed or fails to pay a portion of this sum, the subscriber shall be liable for late charges stipulated in the bylaws, otherwise 20 percent per year.

(3) If the subscriber does not pay the nominal value of the securities subscribed to within 60 days or within another time limit stipulated, from the day he was requested to do so by the founder or by the Board of Directors, the Board of Directors may demand the return of the provisional certificate or may inform the subscriber that his temporary certificate is being declared null and void. The board then may issue a replacement temporary certificate to another subscriber under conditions governing the issuance of the terminated temporary certificate. The proceeds of issuing a replacement temporary certificate shall be used to refund the paid in portion to the original subscriber, after satisfying any claims by the corporation as a result of the violation of his obligations.

### Segment 3. Rights and Obligations of Stockholders

#### Section 178

(1) A stockholder has the right to a share in the profits of the corporation (dividend) which the stockholders'

meeting has set aside for distribution according to financial results. Provided the bylaws dealing with securities having differing claims on the profit shares do not specify otherwise, the share of the profits is determined by the ratio between the nominal value of the securities held by the stockholder and the nominal value of the shares held by all stockholders.

(2) Dividends may not be paid from capitalization or the reserve fund and from resources which, according to this law or according to the bylaws, must be utilized to supplement the reserve fund.

(3) The share of the profits due to the officers and the members of the Board of Directors may be determined by the stockholders' meeting on basis of the profits set aside for distribution.

(4) Unless provided otherwise by a special law, the employees of a corporation may, in accordance with the bylaws, share in the distribution of the profits. The bylaws may specify that this share of the profits may be used only to acquire employee shares of the corporation.

#### Section 179

(1) A stockholder is not required to refund to the corporation any dividend accepted in good faith.

(2) Neither during the existence of a corporation nor in the event of its dissolution, is a stockholder entitled to a refund of his investments. Payments made for employee shares are not considered to be a refund of investment.

(3) After a corporation is dissolved and liquidated, a stockholder has the right to a share in the liquidation proceeds.

#### Section 180

A stockholder is entitled to attend the stockholders' meeting, to cast his vote, to demand explanations, and to make recommendations at the meeting. The number of votes a stockholder has is governed by the nominal value of the shares he holds. The method of voting is determined by the bylaws, which may also restrict the exercise of voting rights by setting the maximum number of votes allowed each stockholder.

#### Section 181

(1) Stockholders who have shares whose nominal value exceeds at least 10 percent of capitalization have a right to ask the Board of Directors to call a special meeting of the stockholders to discuss proposed matters.

(2) The Board of Directors shall convene an extraordinary stockholders' meeting not later than 30 days from the date the Board of Directors received a request to convene such a meeting. In the event the Board of Directors does not fulfill this duty, the extraordinary meeting of the stockholders' meeting will be convened at the request of the stockholders listed in Paragraph 1 above within the same time limit effective on the date it has been presented to the court. The stockholders involved have the right to be compensated for any expenditures involved in this procedure.

### Section 182

At the request of the stockholders listed in Section 181, Paragraph 1, above:

- a) the Board of Directors shall place the matters identified by the stockholders on the agenda of the stockholders' meeting;
- b) the Board of Directors will examine the way in which the company officers perform their specialized functions.

### Section 183

Provisions of Section 131 also apply with regard to declaring the decisions of the stockholders' meeting to be invalid.

## Segment 4. Corporate Organization

### The Stockholders' Meeting

#### Section 184

- (1) The highest corporate body is the stockholders' meeting composed of all stockholders present at the meeting.
- (2) The stockholders' meeting is held at least once a year and is convened by the Board of Directors, provided this law does not specify otherwise; the meeting is convened by the method and within the time limits specified in the bylaws.
- (3) In corporations which issue stock certificates in the names of specific individuals, the Board of Directors shall send out invitations to all stockholders at least 30 days prior to stockholders' meeting. In corporations which issue stock certificates to bearer, an announcement regarding the upcoming meeting of the stockholders' meeting is also published by the method determined by the bylaws 30 days prior to the meeting.
- (4) An invitation to attend the stockholders' meeting or an announcement that the stockholders' meeting will be held will consist of at least the following information:

- a) the trade name and corporate headquarters;
- b) the place, date, and hour of the meeting;
- c) a statement indicating whether a regular or extraordinary stockholders' meeting is being convened;
- d) the agenda for the stockholders' meeting.

#### Section 185

- (1) The stockholders' meeting is considered to have a quorum if stockholders with a nominal value of securities totaling more than 30 percent of capitalization are present, provided the bylaws do not specify otherwise.
- (2) Stockholders present at the meeting shall record their names on a list which contains the name and headquarters of the legal entity or the name and domicile of a private individual who is a stockholders, or his representative, and the number and nominal value of the securities that constitute the authorization to vote. The correctness of the list of those present shall be confirmed by the signatures of

the chairman of the stockholders' meeting and by the recording secretary, who have been elected in accordance with the bylaws.

(3) In the event the stockholders' meeting falls short of a quorum, the Board of Directors shall convene a substitute stockholders' meeting within three weeks from the day the original meeting was to be held. The substitute stockholders' meeting must have the same agenda and is considered to have a quorum without regard to the provisions of Paragraph 1 above.

(4) Items not placed on the proposed agenda of the stockholders' meeting may be decided only with the participation and approval of all stockholders of the corporation.

### Section 186

- (1) The stockholders' meeting decides by majority vote of those present, as long as this law or the bylaws do not specify a different kind of majority.
- (2) A decision by the stockholders' meeting to change the rights attached to securities requires the approval of a two-thirds majority of the stockholders holding such securities.

### Section 187

- (1) The following falls within the jurisdiction of the stockholders' meeting:
  - a) amendment to bylaws;
  - b) decisions to increase and decrease capitalization and to issue bonds;
  - c) election and recall of members of the officers, insofar as the bylaws do not specify that these individuals are elected and recalled by the Board of Directors (Section 194, Paragraph 1);
  - d) election and recall of members of the Board of Directors and other bodies specified in the bylaws, with the exception of those members of the Board of Directors who are elected according to Section 200;
  - e) approval of the annual financial statement, decisions regarding the distribution of profits and determination of bonuses;
  - f) decisions regarding the dissolution of the corporation;
  - g) decisions on other items covered in the bylaws under the jurisdiction of the stockholders' meeting.
- (2) Decisions on bylaw amendments, increase or decrease of capitalization, and dissolution a corporation require a two-thirds majority vote of those present and voting and that a notarized entry be made of that fact.

### Section 188

- (1) The stockholders' meeting shall elect its chairman, its recording secretary, two certifying officers, and individuals entrusted with counting the votes.
- (2) The record of the stockholders' meeting shall contain the following:

- a) the trade name and corporate headquarters;
- b) the place and time of the meeting;
- c) the name of the chairman, the recording secretary, the certifying officers, and the names of individuals counting the votes;
- d) minutes of discussions involving the individual items of the agenda of the stockholders' meeting;
- e) the decisions made by the stockholders' meeting, along with the results of the voting;
- f) any objections by the stockholders, company officers, or by the Board of Directors relating to a decision by the stockholders' meeting, if so desired by the individual making the objection.

(3) The entry shall be accompanied by any recommendations and statements made during the discussion in the stockholders' meeting.

### Section 189

- (1) The company officers shall ensure that a record of the stockholders' meeting is made within 30 days of the termination of the meeting. The record shall be signed by the recording secretary and by the chairman of the stockholders' meeting meeting and by the two elected certifying officers.
- (2) Every stockholder may request a copy of the record or an excerpt therefrom from the Board of Directors.
- (3) Records of stockholders' meeting meetings, together with the publication or invitations to attend the stockholders' meeting meeting and the listing of stockholders present at the meeting, are become a permanent record of the corporation.

### Section 190

If the corporation has only a single stockholder, this individual exercises the function of the stockholders' meeting. The provisions of Section 187, Paragraph 2, and Sections 188 and 189 apply to recording of decisions made as a result of exercising the function of the stockholders' meeting.

### Corporate Officers

#### Section 191

(1) The corporate officers are are a statutory agents who manage the corporation and act in its name. The officers makes decisions regarding all matters involving the corporation, provided these matters are not reserved for the stockholders' meeting by this law or the bylaws of the corporation. If the bylaws do not specify otherwise, every officer is entitled to act in the name of the corporation. Corporate officers who can encumber the corporation, as well as the method by which they do so, are recorded in the Business Register.

(2) The bylaws, the decisions of the stockholders' meeting, or the Board of Directors may restrict the rights of the

corporate officers to act in the name of the corporation, although such restrictions are not effective with respect to third parties.

### Section 192

- (1) The corporate officers ensure that accounts are kept by the corporation and presents, to the stockholders' meeting for approval, the financial statement, together with the recommendation to distribute profits. The annual financial statement is mailed to stockholders holding securities in their name at least 30 days prior to the stockholders' meeting meeting. If the corporation issues securities made out to bearer, the principal financial statement information are to be published within the same time limit by a method established in the bylaws.
- (2) Within time limits established by the bylaws, the corporate officers shall submit to the stockholders' meeting a report on the business of the corporation and on the status of its assets.

### Section 193

The corporate officers shall convene an extraordinary stockholders' meeting if they determine that the corporation has lost one-third of its capitalization or that it has been insolvent for a period longer than three months. It informs the Board of Directors of these facts without delay.

### Section 194

- (1) Corporate officers are elected and recalled by the stockholders' meeting from the ranks of stockholders or other individuals for a period of time stipulated in the bylaws which may not exceed five years. The bylaws may delegate that corporate officers be elected and recalled by the Board of Directors by a method identified in the bylaws.
- (2) The bylaws may stipulate that the corporate officers, whose number has not declined to fewer then one-half, may appoint replacements to serve until the next stockholders' meeting. Only an individual can be a corporate officer.
- (3) The corporate officers shall consist of at least three members. They will select a chief executive officer. The corporate officers make decisions by a majority vote of members designated in the bylaws or by the majority vote of all its officers.
- (4) The corporate officers shall be governed by the principles and directives approved by the stockholders' meeting. Violation of these principles and directives has no influence upon the effects of the actions of members of the corporate officers with respect to third parties.

(5) The corporate officers are obligated to carry out their duties with due care and to maintain confidentiality of information and facts, where their disclosure to third parties could cause the corporation to suffer damage.

(6) Corporate officers who have violated their duties are liable for compensating third parties for any damages, if

the compensation for these damages cannot be provided by the corporation due to insolvency.

### Section 195

(1) Minutes of meetings of the corporate officers executive board and its decisions signed by the chief executive officer and by the recording secretary are kept for record.

(2) Every member of the corporate officers executive board has the right to have his dissenting opinion included in the minutes with regard to any matter that is discussed.

### Section 196. Conflict of Interest

(1) Provided the bylaws do not specify otherwise, a corporate officer may not engage in the following activities:

a) engage in transactions, which are the business of the corporation, in his own name or on his own account;

b) broker corporate business transactions on behalf of third party;

c) engage in business of another corporation as a partner with unlimited liability; and

d) exercise a function as an agent or a member of a statutory or another legal entity engaged in similar business, unless it is a business in which the corporation of which he is an officer or agent is participating in.

(2) Violation of this provision will result in consequences listed in Section 65.

### Board of Directors

#### Section 197

(1) The Board of Directors oversees the actions of the corporate officers [executive board] and monitors the business activities of the corporation.

(2) Members of the Board of Directors are authorized to examine all documents and records having to do with the business of the corporation and to check whether the accounts are kept according to facts and whether the business of the corporation is done in accordance with the laws, regulations, bylaws, and the recommendations made by the stockholders' meeting.

#### Section 198

The Board of Directors examines the annual financial statement and the proposed distribution of profits and submits its comments to the stockholders' meeting.

#### Section 199

(1) The Board of Directors shall convene the stockholders' meeting if the interests of the corporation so require and, at the stockholders' meeting, will propose the necessary measures. The method of convening the stockholders' meeting is outlined in provisions of Section 184.

(2) The Board of Directors shall identify one of its members to represent the corporation in proceedings before the courts and other bodies which are directed at another member of the Board of Directors.

### Section 200

(1) The Board of Directors must have at least three members. Two-thirds of the members of the Board of Directors are elected by the stockholders' meeting and one-third is elected by the employees of a corporation with more than 50 full time employees at the time of the elections. The bylaws may specify that a larger number of members of the Board of Directors be elected by the employees, but this number must not be greater than the number of members being elected by the stockholders' meeting; the bylaws may also specify that the employees may elect a portion of the members of the Board of Directors even if a corporation has fewer than the previously specified number of employees.

(2) Members of the Board of Directors are elected for a period stipulated in the bylaws which, however, may not exceed five years.

(3) Members of the Board of Directors are also subject to provisions of Section 194, Paragraphs 4 and 5, and Section 196.

(4) Only a private individual may be a member of the Board of Directors. A member of the Board of Directors may not at the same time be a member of the executive board of corporate officers, an agent, or an individual otherwise authorized by the Business Register to act in the name of the corporation.

### Section 201

(1) Members of the Board of Directors shall participate in the stockholders' meeting meeting of the corporation and are obligated to inform the stockholders' meeting of the results of their auditing activities.

(2) Any dissenting opinion by members of the Board of Directors who have been elected by the employees of the corporation is communicated to the stockholders' meeting, together with the conclusions reached by the other members of the Board of Directors.

(3) The Board of Directors makes decisions on the basis of the approval of the majority of its members. The meetings of the Board of Directors are recorded and the minutes are signed by the chairman of the board. The minutes will also reflect the positions taken by a minority of the members, provided they so request.

### Segment 5. Increasing Capitalization

#### Section 202

(1) Increases in capitalization are decided by the stockholders' meeting, on recommendation by the Board of Directors and by a two-thirds majority vote of the stockholders present and voting. If more than one type of security has been issued, a majority vote of stockholders present and voting is required for each type of security.

(2) The invitation or publication of the convening of the stockholders' meeting shall provide reasons for the proposed increase in capitalization, the method and amount of this increase, as well as the proposed number of new securities to be issued or a new nominal value assigned to

existing securities. If an increase in capitalization is to be accomplished through the issuance of new securities, the time limit for subscription to the securities is given. If there is a recommendation to issue a new type of security, the rights attached to such securities, together with the consequences which the issuance of these securities will have upon the rights attached to previously issued securities.

(3) If an increase in capitalization includes a non-cash investment, the invitation or announcement shall contain information regarding the purpose of the investment and its proposed valuation. A professional estimate of the value of property will be presented to the stockholders' meeting.

(4) The increasing capitalization becomes effective on the day an appropriate entry is made in the Business Register.

#### **Increasing Capitalization by Subscription to New Securities**

##### **Section 203**

(1) Increasing capitalization by subscribing to new securities is authorized, provided the stockholders have paid for all previously subscribed securities. This restriction does not apply to increasing capitalization through noncash investments or unpaid portions of employee securities.

(2) The securities subscription involved in increasing capitalization is subject to the same provisions on subscribing to securities as that involving an establishment of a corporation.

##### **Section 204**

(1) In subscribing to securities intended to increase capitalization, the subscriber is obligated to pay part of the nominal value of the securities stipulated by the stockholders' meeting, but at least 30 percent of that value.

(2) If the bylaws do not specify otherwise, existing stockholders have a preemptive right to subscribe to securities intended to increase capitalization at a ratio of their stock participation in the existing capitalization on the basis of their.

(3) In the event the corporation has issued convertible bonds (Section 160) with the right to purchase newly issued stock certificates, it is obligated to offer the new securities to the holders of bonds according to bylaws and the bond issue contract. This right to purchase takes priority over the preemptive right to purchase enjoyed by existing stockholders. If a holder of a bond does not avail himself of his right to subscribe to new securities, as specified on the bond, his preemptive right to purchase expires.

(4) As long as the bylaws do not specify otherwise, the right to dividends based on profits achieved within the year in which there was an increase in capitalization is based on the securities issued in conjunction with increasing capitalization of the corporation.

##### **Section 205**

If a corporation was established without an invitation to subscribe to its securities and if all stockholders agreed on the extent of their participation in increasing capitalization, it is possible to increase this capitalization without publishing an invitation to subscribe to securities. Otherwise, the increase in capitalization is subject to the provisions of Section 203, Paragraph 1.

##### **Section 206**

The corporate officers may submit a recommendation to have the increase in capitalization recorded in the Business Register after the subscription to securities equals the amount of this increase and after at least 30 percent of the nominal value of the securities has been paid, in the event of capitalization.

##### **Contingent Increase in Capitalization**

##### **Section 207**

(1) If, according to the bylaws, the stockholders' meeting makes a decision to issue bonds whose owners have the right to convert them into stocks equal to the nominal value of these bonds, the stockholders' meeting shall entrust the Board of Directors with increasing capitalization to the extent of the asserted rights inherent in these bonds.

(2) Holders of bonds assert their rights according to Paragraph 1 above in writing, giving the number of shares they are requesting.

(3) The Board of Directors shall issue the bondholders securities at the nominal value corresponding to their claims based on their presentation of those bonds.

##### **Increasing Capitalization From Assets Owned by the Corporation**

##### **Section 208**

(1) After approving the annual financial statement or a special statement, the stockholders' meeting may decide that parts of the profit or other property of the corporation in excess of capitalization and not obligated for special purposes shall be used to increase capitalization of the corporation. Stockholders participate in increasing capitalization in accordance with the nominal values of the shares to which they have subscribed.

(2) Securities that are held by the corporation in accordance with Section 161, Paragraph 1, above also participate in the capitalization increase.

##### **Section 209**

(1) The increase is accomplished either by issuing new securities and their cost-free distribution among stockholders according to their share of securities to which they have subscribed for the existing capitalization or by raising the nominal value of existing shares.

(2) Raising the nominal value of existing shares is accomplished either by exchanging them or by assigning a higher

value to existing securities and by having them signed by two corporate officers authorized to act for the corporation.

#### **Section 210. Increasing Capitalization by Corporate Officers**

(1) The bylaws may authorize the corporate officers executive board to issue new stock certificates under conditions stipulated in the bylaws or to transfer corporate assets in excess of capitalization to capitalization and increase it to a determined level, but, at a maximum, to a level which is one-third higher than the existing capitalization.

(2) If the bylaws so specify, the stockholders' meeting can also require the corporate management to increase capitalization by issuing employee stock certificates, specifically to use of the employee share of corporate profits to purchase these stock certificates. Details will be provided in the bylaws.

#### **Segment 6. Decreasing the Capitalization**

##### **Section 211**

(1) The stockholders' meeting shall decide on reducing capitalization by a two-thirds majority vote of all stockholders present and voting, upon the recommendation of the corporate management. If several types of securities have been issued, this majority vote of all stockholders present and voting is required for each type of security. The decision of the stockholders' meeting shall include the reasons for decreasing capitalization, the amount of the decrease, the method by which it is to be accomplished, and the deadline for returning the securities to the corporation.

(2) Capitalization may not be lowered below the minimum level stipulated in Section 162, Paragraph 3.

(3) A decrease in capitalization of a corporation encompasses primarily securities owned by the corporation.

(4) A decrease in capitalization may not impact the rights of bondholders (Section 160).

##### **Section 212**

The invitation or notice to convene the stockholders' meeting shall give reasons for the proposed decrease in capitalization, as well as the method and amount of the decrease involved.

##### **Section 213**

(1) A decrease in capitalization is accomplished by lowering the nominal value of securities or by recalling a certain number of securities from circulation.

(2) A decrease in the nominal value of securities is accomplished by exchanging them for new securities with a lower nominal value or by assigning a lower nominal value to existing securities, accompanied by the signatures of two corporate officers authorized to sign for the corporation.

(3) Securities are recalled from circulation by repurchase of securities called in by the corporate management or by

repurchasing securities which have been drawn by lot. Detailed rules for recalling securities are established by the stockholders' meeting at the time it decides to reduce capitalization.

(4) The decision by the stockholders' meeting to reduce capitalization is recorded in the Business Register. The request for change is submitted by the corporate management within 30 days of the stockholders' meeting decision.

##### **Section 214**

(1) The management will call upon stockholders who hold securities made out in their name to submit them to the corporation within the time limit decided upon by the stockholders' meeting for purposes of exchanging them, of indicating a lower nominal value on them, or for recalling them from circulation. In the event a corporation has issued securities made out to bearer, it shall publish the recall to have them presented for action.

(2) The management shall declare that recalled securities which have not been submitted within a deadline despite the invitation to do so to be invalid. The declaration of securities as invalid is communicated to stockholders by the method listed in Paragraph 1 above and is published.

##### **Section 215**

(1) The management is required to notify persons who have claims against the corporation prior to the entry of the decision of the stockholders' meeting in the Business Register of the extent to which capitalization is being reduced within 30 days of the decision of the stockholders' meeting to effect this reduction.

(2) Moreover, the decision of the stockholders' meeting is published at least twice in succession at a minimum 30-day interval.

(3) Creditors of the corporation listed in Paragraph 1 above are entitled to demand, within 90 days of having received the notification that capitalization is being reduced (or within 90 days from the day of the second publication of that fact), that their claims will be satisfied.

(4) In the event creditors and the corporation cannot agree on the method of satisfying their claims, the court shall decide on an adequate method, taking the type and size of the claims into account.

##### **Section 216**

(1) After the expiration of 90 days from delivery of the announcement listed in Section 215, Paragraph 1, or 90 days after the last publication of the decision according to Section 215, Paragraph 2, the management may submit a proposal to have the reduction in capitalization recorded in the Business Register. The court of registry shall make the entry, provided it has proof of the announcement of the decision by the stockholders' meeting to lower the capitalization according to Section 215, Paragraphs 1 and 2, and is satisfied that creditor claims have been secured or satisfied.

(2) Capitalization is considered to have been reduced as of the day this fact is recorded in the Business Register.

(3) Prior to recording the decrease in capitalization in the Business Register, stockholders may not be given any satisfaction on the basis of lowered capitalization or that reason cannot be used to forgive or to reduce the unpaid portion of the nominal values of their securities.

#### Segment 7. Allowances

##### Section 217

(1) At its inception, a corporation shall create a reserve fund of a size and by the method determined in the bylaws. The minimum size of the reserve fund is 10 percent of capitalization. This fund is augmented annually by a sum stipulated in the bylaws, but which must be a minimum of 5 percent of the net profits until such time as the allowance is at a level stipulated in the bylaws, but at least 20 percent of the capitalization.

(2) Use of the allowances is decided by management, unless provided otherwise in the bylaws.

#### Segment 8. Dissolution and Liquidation of a Corporation

##### Section 218

The dissolution of a corporation is a decision made by the stockholders' meeting. The dissolution and termination are subject to provisions listed in Section 68.

##### Section 219

(1) The liquidator is appointed by the stockholders' meeting.

(2) As long as the bylaws do not indicate otherwise, stockholders holding securities which represent at least one-tenth of capitalization may petition the court, along with listing their reasons, to recall a liquidator appointed by the stockholders' meeting and to replace him with another individual.

(3) A liquidator who has not been appointed by the court may be recalled by the stockholders' meeting and replaced by another liquidator.

##### Section 220

(1) After satisfying all creditors, the liquidation proceeds are distributed among stockholders at a ratio commensurate with the nominal value of their shares, provided the bylaws do not specify otherwise.

(2) In the event the securities have not been fully paid for, the stockholders are entitled to the sum which they have paid and the remainder is apportioned among stockholders at a ratio corresponding to the nominal value of their shares.

(3) In the event the liquidation proceeds are insufficient to compensate for the nominal value of the securities, it is shared among stockholders at a ratio corresponding to the paid nominal value of their securities.

## CHAPTER II. Cooperatives

### Article I. Provisions

#### Section 221

(1) A cooperative is an association of an open-ended number of individuals, established for purposes of engaging in business transactions or of supporting the economic, social, or other requirements of its members.

(2) The trade name of a cooperative must contain the designation "cooperative" (druzstvo).

(3) A cooperative must have at least five members; this is not true if its membership includes at least two legal entities. The life of a cooperative is not affected by the accession of additional members or by the dissolution of membership of existing members, provided the cooperative meets the conditions of the preceding statement.

#### Section 222

(1) A cooperative is a legal entity. It is liable with its entire property.

(2) Members are not liable for the cooperative's liabilities. The bylaws may stipulate that members of a cooperative, or some of them, have, on the basis of a decision taken by the membership meeting, indemnification obligations of a specific magnitude with respect to the cooperative which exceed their membership investment to cover cooperative losses.

#### Section 223

(1) Capitalization of a cooperative is made up of the totality of the membership investments which the members of the cooperative have promised to make.

(2) The bylaws determine the amount of capitalization, which is recorded in the Business Register (recorded basic capitalization). The recorded basic capitalization must be at least Kcs50,000.

(3) A condition of membership is the payment of the membership investment as determined in the bylaws (membership investment) or a portion of the membership investment stipulated in the bylaws (initial investment).

(4) To the extent to which the bylaws so permit, members of a cooperative may obligate themselves to make additional investments and to pledge additional property to the cooperative business under conditions stipulated in the bylaws.

(5) Noncash assets are valued by a method stipulated in the bylaws or by agreement of all of the members at the time the cooperative is established.

(6) A member is required to make his membership investment which exceeds the initial investment within three years, provided the bylaws do not specify a shorter time. The bylaws may specify that, if losses incurred by the cooperative so require, the members must pay the unpaid portion of their membership prior to the due date, based on the decision of the membership meeting.

#### Section 224. Establishment of a Cooperative

- (1) Establishment of a cooperative requires a constituent meeting of the cooperative.
- (2) A constituent meeting of the cooperative accomplishes the following actions:
  - a) it sets the level of recorded capitalization;
  - b) it approves the bylaws;
  - c) it elects its management and appoints an audit commission.
- (3) Individuals who have submitted an application to join a cooperative are authorized to vote at the constituent meeting of the cooperative. Before deciding on matters listed in Paragraph 2, the constituent membership meeting shall elect its presiding officer. Until that individual is elected, the meeting is chaired by the individual who called it.
- (4) The constituent meeting of a cooperative elects its officers and adopts resolutions by majority vote of those present. An applicant for membership must withdraw his application immediately following the vote on bylaws in the event he voted against their adoption.
- (5) The constituent meeting of the cooperative leads to its establishment if applicants for membership obligate themselves to make a membership investments required in the recorded capitalization. The membership or initial investment must be paid off within 15 days of the constituent meeting of the cooperative to the designated officer by a method stipulated by the membership meeting.
- (6) The course of the constituent meeting of the cooperative is certified by a notarized entry which also contains a listing of the members and the size of their individual membership investments to which they have agreed at the meeting of the cooperative. The approved text of the bylaws is attached to the notarized record.

#### Section 225

- (1) The cooperative comes into being on the day of recordation in the Business Register. Prior to submitting the request for this recordation, at least one-half of the recorded capitalization must have been paid.
- (2) The request for recordation must be submitted by the management. The request for recordation is signed by all members of the management.
- (3) The following are attached to the proposal for recordation:
  - a) a notarized record covering the constituent meeting of the cooperative, signed by all members of the management;
  - b) the bylaws of the cooperative;
  - c) a document indicating that the stipulated portion of the recorded capitalization has been paid off.

#### Section 226

- (1) The bylaws of the cooperative must contain the following information:
  - a) its trade name and seat of the cooperative;
  - b) its business (activities);
  - c) information on the inception and dissolution of membership, rights, and obligations of members vis-a-vis the cooperative and of the cooperative vis-a-vis its members;
  - d) the size of the membership investment, or possibly also the size of the initial investment; the method of paying the membership investments and the method for settling membership shares in the event membership is dissolved;
  - e) the cooperative committees and the number of its members, the duration of their appointments, the method by which they were constituted, their authority, and the method by which they are convened and their operating method;
  - f) the method for using profits and the method of compensation for possible losses;
  - g) the creation and use of the indivisible fund;
  - h) additional provisions, as required by this law.
- (2) In the event the bylaws specify that a condition for membership is also an employer-employee status of the members with regard to the cooperative, then the bylaws may contain provisions regulating this status. These provisions may not be in conflict with labor laws, unless such a modification is more advantageous for the member involved. If the bylaws do not contain a special modification of the employer-employee status, then labor laws apply.
- (3) The membership meeting makes decisions regarding the amendments to bylaws. The management of the cooperative is required to notify the court of registry court within 30 days of the time the bylaws were amended.

#### Article II. Inception and Dissolution of Membership

#### Section 227

- (1) Private individuals as well as legal entities may become members of a cooperative. If the bylaws make employment in the cooperative a condition for membership, a private person who has finished school attendance and has attained the age of 15 may become a member of a cooperative.
- (2) After qualifying under conditions called for by the law and bylaws, membership comes into being under the following conditions:
  - a) at the inception of the cooperative as of the day the cooperative comes into being;
  - b) during the existence of a cooperative, by being accepted as a member on the basis of a written membership application;
  - c) by transferring membership; or

d) by another method stipulated by law.

(3) If a member's employee status with regard to the cooperative is a condition for membership stipulated in the bylaws, and provided the bylaws do not specify otherwise, membership comes into being on the day agreed upon as the day of inception for the employee status and becomes dissolved on the day the member's employee status in the cooperative is terminated.

(4) Membership does exist prior to the payment of the initial investment.

(5) More details of changes in membership rules, its inception and dissolution, are contained in the bylaws.

### Section 228

A cooperative maintains a listing of all of its members. Apart from containing the name and seat of the legal entity or the name and domicile of a private individual member, the listing also contains the size of the membership investment and the amount of the membership investment paid. All changes to recorded facts will be made without delay. The management shall make it possible for everyone who can prove they have a legal interest to examine the records. A member of a cooperative has the right to view the files and demand that a certificate of membership and extract of a recorded entry pertaining to him.

### Section 229

(1) Provided the bylaws do not exclude such a move, a member can transfer his rights and responsibilities to another member of the cooperative. The agreement covering the transfer of membership rights and obligations to another person is subject to approval by the management. The bylaws may provide for exclusions of possibility of such transfers. A member can appeal a negative decision to the membership meeting. By the decision of management or the membership meeting approving the agreement to transfer membership rights and responsibilities, the individual acquiring the membership rights and obligations becomes a member of the cooperative within the scope of rights and obligations previously enjoyed by the transferring member.

(2) The bylaws can specify cases in which the management may not withhold its approval for a transfer of membership rights and obligations or cases where the management approval is not required.

### Section 230

The transfer of rights and obligations connected with membership in a housing cooperative on basis of agreement is not subject to the approval of management. Membership rights and responsibilities pass to the acquiring individual with respect to the cooperative upon submission of a contract to transfer membership to the appropriate cooperative or effective on a later date stipulated in this contract. A written notice of the current member, concerning a transfer if his membership and a written agreement of the acquiring member have the same effect as the submission of a contract to transfer membership.

### Section 231

(1) Membership is dissolved by written agreement, withdrawal, expulsion, or because the cooperative ceases to exist.

(2) Withdrawal dissolved the membership within a period specified by the bylaws, but, at the latest, upon the expiration of six months from the day the member notified the cooperative management of his withdrawal in writing.

(3) A member can be expelled if he has repeatedly and in the face of warnings violated his membership obligations or for other important reasons specified in the bylaws. A private individual may also be expelled if he has been legally sentenced for committing a criminal act against the cooperative or a member of the cooperative. A decision regarding the expulsion, which must be communicated in writing to the membership, is made by the management, provided the bylaws do not specify otherwise. A member has the right to file an appeal to the membership meeting against the decision that he be expelled.

(4) Upon the request of a member to whom the decision applies, the court shall declare the decision of the membership meeting to expel a member to be null and void if it is in conflict with legal provisions or the bylaws.

### Section 232

(1) The membership of a private individual is dissolved upon his death. The heir of the member's rights and responsibilities of a testator may apply to the cooperative for membership. The law or the bylaws may specify conditions under which the management may or may not reject the membership application by an heir.

(2) Approval by the management is not required if the heir acquires the rights and obligations connected with membership in a housing cooperative.

(3) An heir who did not become a member has the right to receive the settlement share of the member whose membership became extinguished.

(4) The membership of a legal entity in a cooperative is dissolved upon a liquidation or request for protection under bankruptcy laws or as a result of its termination. If a legal entity has a legal successor, that successor assumes all of its existing membership rights and responsibilities.

### Section 233

(1) If membership is dissolved while a cooperative is in existence, the member has a right to receive a settlement.

(2) A settlement is determined by the rate of paid-up membership investment of the member involved, multiplied by the number of completed years of membership and with respect to the paid-up membership investments by all members, multiplied by the number of completed years of their membership.

(3) For purposes of determining the settlement, the status of the cooperative net worth, according the financial statement for the year in which the membership is dissolved, is used. In setting the size of the settlement, any

indivisible capital assets are disregarded and, in the event the bylaws so specify, any other reserve funds are also disregarded. Furthermore, investments of members with less than a full year of membership prior to the day on which the annual financial statement is compiled are not taken into account.

(4) The settlement is payable within three months of the date on which the financial statement for the year in which membership is dissolved is approved. An entitlement to the share in profits exists only for the duration of membership.

(5) The provisions of Paragraphs 2 through 4 are applicable unless the bylaws specify otherwise.

#### Section 234

(1) The settlement is made in cash. The bylaws may specify that, in cases where the membership investment was wholly or partially in the form of a transfer of ownership rights to real estate to the cooperative, a member may request settlement by way of return of this real estate at a value which is recorded as part of the cooperative assets at the time his membership terminates. If the size of the settlement is less than the value of the returned real estate, the acquiring member is obligated to compensate the cooperative in cash for the difference. The bylaws may specify that a similar procedure will be applicable in the case where the membership investment involves the granting of another form of substantive fulfillment. The cooperative shall answer to the member for handling cooperative property in a way which would render such a returning impossible.

(2) The entitlement for return of agricultural land investment in a cooperative accrues to a member under paragraph 1 even if the bylaws do not specify that such entitlement exists.

#### Section 235. The Indivisible Reserve

(1) At its inception, the cooperative is obligated to establish an indivisible reserve of at least 10 percent of the capitalization. This reserve is augmented by the cooperative by adding at least 10 percent of the annual net profit until such time as the indivisible fund attains a level equal to one-half of the recorded capitalization of the cooperative. The bylaws may specify that a higher indivisible reserve be created or that other security funds be established.

(2) The indivisible reserve may not be used for distribution among the membership while the cooperative exists.

#### Section 236. Distribution of Profits

(1) The membership meeting shall decide on the amount of profit which is to be divided among the members at the time the annual financial statement is discussed.

(2) If the bylaws do not specify otherwise, the share of a member in the profit intended for distribution among the membership is determined by the ratio between the size of his paid-in investment and the paid investments of all

members; for members whose membership in the decisive year lasted only for a portion of the year, this share is reduced on a pro rata basis.

(3) If the bylaws so permit, the bylaws of a cooperative or the membership meeting may agree on another method for determining the share of a member in profits which is to be distributed among the members.

### Article III. Cooperative Bodies

#### Section 237

The following are bodies of a cooperative:

- a) the membership meeting;
- b) the management;
- c) the audit committee;
- d) other bodies provided for in the bylaws.

#### Section 238

(1) Only members of the cooperative who are older than 18 years of age and representatives of legal entities which are members of the cooperative may be elected to serve on a cooperative body.

(2) If a legal entity is a member of the cooperative, it will appoint an agent to represent it in a cooperative body.

(3) As long as this law does not specify otherwise, resolutions adopted by the membership meeting, by the management, or by the audit committee are valid provided such meetings have been regularly convened, are attended by more than a 50-percent majority of the members, and have the approval of the majority of members present. This law or the bylaws specify the kinds of resolutions which require the approval of a qualified majority.

#### Membership Meetings

#### Section 239

(1) The highest body of a cooperative is the meeting of cooperative members (hereinafter referred to as "membership meeting").

(2) A membership meeting is convened within the deadline specified in the bylaws, but at least once each year. The convening of the membership meeting must be announced to members by a method specified in the bylaws.

(3) A membership meeting must be convened if at least one-third of all members of the cooperative request it in writing, if the audit committee so requests, as well as in other cases specified in the bylaws.

(4) The jurisdiction of the membership meeting includes the following:

- a) amendment of the bylaws;
- b) election and recall of members of management and audit committee;
- c) approval of the annual balance sheet;
- d) decision on the distribution and use of profits or possible methods for compensating for losses;

- e) decision on increase or decrease in capitalization;
- f) fundamental decisions on the concept of cooperative development
- g) decision on mergers, consolidation, transformation, breakup, or other forms of dissolving the cooperative.

(5) The membership meeting makes decisions on other events of the cooperative and its activities, as long as this law and the bylaws so stipulate or if it has reserved for itself the decisionmaking on specific matters.

(6) The bylaws of the cooperative may specify that membership meetings be held in the form of contingency meetings. In making decisions, the votes cast at all contingency membership meetings are totaled. Contingency membership meetings cannot make decisions regarding dissolution of a cooperative and in other cases specified in the bylaws.

(7) If, in view of the size of the cooperative, it is not possible to convene regular membership meetings, the bylaws may specify that a meeting of delegates fulfills the requirements of a membership meeting within the scope prescribed for it. Each delegate is elected by the same number of votes. The bylaws may specify deviations from this procedure, to the extent to which they are necessary in view of the organization of the cooperative.

(8) In the event a membership meeting lacks a quorum, the management will convene a substitute membership meeting within three weeks of the day the originally scheduled membership meeting was to take place. The substitute membership meeting must have the same agenda and is considered to have a quorum without regard to the provisions of Paragraph 3, Section 238. Similar procedures apply for contingency membership meetings and for meetings of the delegates.

#### Section 240

- (1) Each member has one vote, as long as the bylaws do not specify otherwise.
- (2) If the bylaws so permit, a member of a cooperative may authorize another member of the cooperative to represent him at the membership meeting. This procedure leaves the regulations on representation contained in the law or on the basis of a court decision untouched.

#### Section 241

- (1) A minutes are kept on each membership meeting and must contain the following information:
  - a) the date and place of the meeting;
  - b) resolutions adopted;
  - c) the results of the voting;
  - d) objections by members who have requested that they be placed on record after their objection were turned down.
- (2) An enclosure to the record listing participants at the meeting, the invitation to attend the meeting, and documents which were submitted in support of items discussed.

- (3) Each member has the right to a copy of the minutes and its enclosures.

#### Section 242

Upon request of a member, the court shall declare a resolution of the membership meeting to be invalid if the resolution is in conflict with regulations or bylaws of the cooperative. A member may submit his request to the court provided he has requested that his objections be made a matter of record at the membership meeting which adopted the resolution or if he has notified the management of his objections within one month of the meeting. Requests may be submitted to the court only within one month of the day the member has requested that his objections be made a matter of record or has notified the management of his objections.

#### Section 243. Management

- (1) The management directs the activities of the cooperative and makes decisions on all cooperative matters which this law or the bylaws have not specifically assigned to another body.
- (2) The management is a statutory body of the cooperative.
- (3) The management implements the resolutions of the membership meeting and answers to it for its activities. If the bylaws do not specify otherwise, the cooperative director or assistant director act for the management outside the cooperative. However, if a legal act undertaken by the management requires a written form, the signatures of at least two members of the management are needed.
- (4) The management meets as necessary. It must meet within 10 days of receiving a reminder by the audit committee if shortcomings have not been rectified as a result of an audit committee notice.

(5) The management elects the director of the cooperative (management) or the assistant director from its ranks, provided the bylaws do not specify that these individuals are to be elected by the membership meeting. The assistant director represents the director during the latter's absence. Other members of the management team may be authorized to represent the director in ranking established by the management.

- (6) The cooperative director organizes and supervises the actions of management. If the bylaws so specify, he also manages the current activities of the cooperative.
- (7) The bylaws may specify that the current activities of the cooperative should be managed by a chairman, to be appointed or recalled by the management.

#### Section 244. Audit Committee

- (1) The audit committee is authorized to audit all activities of the cooperative and to handle the complaints of its members. It is answerable only to the membership meeting and is independent of the other bodies of the cooperative. The audit committee has a minimum of three members.

- (2) The audit committee takes a position regarding the annual financial statement and distribution of profits or losses of the cooperative.
- (3) The audit committee draws the attention of the management to shortcomings which it has found and requires that they be rectified.
- (4) The audit committee meets as necessary, but at least once every three months.
- (5) The audit committee elects a chairman or a deputy chairman from its membership, unless the bylaws require such selection be made by the membership meeting.
- (6) The audit committee is authorized to request the management to provide it with any information concerning the management of the cooperative. The management is required, without undue delay, to inform the audit committee of all facts which could seriously affect the management of or the standing of the cooperative and its members. The same applies with regard to the relationship with a chairman.
- (7) The audit committee may designate one or more members who shall represent them in requesting information within the scope of the authorization held by the audit committee.

#### **Section 245. Small Cooperative Organization**

- (1) Within a cooperative with fewer than 50 members, the bylaws may specify that the functions of management and the audit committee be carried out by the membership meeting.
- (2) The agent in this case is the director or another member elected by the membership meeting.
- (3) In cooperatives in which legal entities are members and which have fewer than five members, the method of decisionmaking and the agency are determined in the bylaws.

#### **Common Provisions Applicable to Cooperative Bodies**

#### **Section 246**

- (1) The bylaws determine the time in office of members of cooperative, however, not exceeding five years.
- (2) Following the establishment of a cooperative, officers can only be elected for a maximum three-year term.
- (3) Unless the bylaws specify otherwise, cooperative officers may be reelected.
- (4) Representatives of legal entities who are officers of a cooperative have the same responsibilities as if they were personally members of the cooperative. The legal entity which appointed them to serve as officers is responsible for any obligations incurred by their actions.

#### **Section 247**

- (1) The function of member of the management and member of the audit committee are mutually incompatible.

- (2) The bylaws may include other areas of incompatibility between functions or circumstances as a result of which a cooperative member may not be officers of one or another elected cooperative body.

#### **Section 248**

- (1) A member of a cooperative who is elected to an office may step down from that office, but is obligated to inform the body of which he is a member accordingly. His functions terminate on the day specified by the body which approved his resignation according to bylaws. If the bylaws do not specify otherwise, the resignation will be handled by the body which elected the individual. The appropriate body must discuss a resignation at its first meeting after it learned of the resignation, but, at the latest, within three months. If not action is taken prior to this deadline, the resignation is considered to have been discussed.
- (2) If the bylaws call for the election of alternate officers, the alternate takes the place of the resigning member effective on the day the resignation becomes effective in a sequence stipulated in the bylaws.
- (3) If no alternate has been elected, an officer may be appointed on provisional basis until such time as regular election of a new officer can be held. The provisional officer has the same rights and responsibilities as a regular officer.
- (4) The provisions of Paragraphs 2 and 3 above also apply in cases where officer election is extinguished as a result of death.

#### **Section 249. Conflict of Interest**

Management officers and the audit committee members of the cooperative, its agents, and the chairman may not be also do business for, nor be members of statutory or oversight bodies of legal entities which are engaged in similar activities. The bylaws may regulate the conflict of interest prohibition differently.

#### **Section 250. Voting in the Management and in the Audit Committee**

- (1) Each member of the management and the audit committee has one vote. Voting is done publicly, provided the bylaws do not specify that, in certain questions, voting shall be by secret ballot. Secret ballots may be agreed upon by the bodies in question on individual basis.
- (2) If the bylaws so permit, resolutions may be adopted by written ballots or via communications equipment, provided officers involved approve this method of voting. In such a case, the individuals voting are considered to be present (Section 238, Paragraph 3).

#### **Section 251**

- (1) Any damage claims arising to the cooperative on basis of the responsibility of its officers are settled by the management. Claims against members of the management are exercised by a designated audit committee member.
- (2) The cooperative claims may be presented before the court only with the prior approval of the membership

meeting. The bylaws may specify that the membership meeting also approves such settlement.

#### **Article IV. Annual Report and Financial Statement**

##### **Section 252**

(1) A cooperative is required to prepare a financial statement for every year of operation.

(2) Together with the annual financial statement, the management shall recommend a method of distribution and use of profits or a method to cover losses incurred.

(3) Members of the cooperative may demand to inspect the annual financial statement and the proposal to distribute profits and losses.

##### **Section 253**

If the bylaws so require, the management shall ensure that an annual cooperative business report and budget forecast, together with any other items specified in the bylaws be prepared. The management shall submit the annual report for discussion to the membership meeting, along with the financial report.

#### **Article V. Termination and Liquidation of a Cooperative**

##### **Section 254**

(1) A cooperative is dissolved on the date it is expunged from the Business Register.

(2) A cooperative is terminated:

- a) as a result of a resolution of the membership meeting;
- b) as a result of a request for protection under the bankruptcy law or court rejection of bankruptcy protection for lack of assets;
- c) as a result of a decision by the court;
- d) upon the expiration of time for which the cooperative was established;
- e) upon attainment of the purpose for which the cooperative was established.

(3) A decision by the membership meeting to terminate will be notified.

##### **Section 255**

(1) A membership meeting resolution calling for consolidation, merger, or a breakup of the cooperative must provide a designation of a legal successor and assets to be passed to the new organization. In case of a breakup of the cooperative, the membership meeting shall decide how the assets of the cooperative and its members are to be distributed. In making this decision, consideration is given to the justified claims of individual members.

(2) A member who does not agree with the transfer of his membership rights and responsibilities to a legal successor of the cooperative can resign from the cooperative effective on the day this transformation is to take place, provided he so notifies the management within one week

following the resolution adopted at the membership meeting. The legal successor of the cooperative must satisfy the claim of the resigning cooperative member for a settlement in accordance with Section 233 within one month from the day the assets of the cooperative are passed to it.

##### **Section 256**

(1) When several cooperatives are consolidated, the assets and memberships pass to the newly created cooperative as of the day it is recorded in the Business Register.

(2) When a cooperative merges with another cooperative, the assets and memberships of the merging cooperative pass to one which is taking over as of the day the merged cooperative is expunged from the Business Register.

(3) When a cooperative breaks up, the assets of the cooperative and the memberships pass to the cooperatives which come into being as a result of the breakup on the day such cooperatives are recorded in the Business Register. The provisions of Section 69, Paragraph 4, are equally applicable.

(4) In the Business Register, the cooperative which is becoming extinguished is expunged and an entry is made listing the cooperative which has come into being as a result of the merger or an entry will include cooperatives which have resulted from a breakup, as well as the names of corporations which have come into being as a result of the transformation of the cooperative, effective the same day. The expunging of a cooperative which has been dissolved as a result of a merger and entries noting changes involving the cooperative with which it has merged are also accomplished as of that day.

(5) As long as the decision by the membership meeting does not indicate otherwise, a member of a cooperative participates in the business of the successor cooperative through his membership investment which is equal in size to his claim against the liquidation settlement in the event the cooperative were to be liquidated.

##### **Section 257**

(1) Upon the recommendation of a government agency, offices or member of a cooperative, or a person who can demonstrate a legal interest, the court may decide on terminating and liquidating a cooperative if:

- a) the number of the members of a cooperative has declined below the number required by Paragraph 3, Section 221;
- b) the cumulative total of membership investment has declined below the amount required by Paragraph 2, Section 223; or
- c) two years have passed since the day the term of office of a cooperative body has expired and new officers have not been elected, the requirement to convene a membership meeting was violated or the cooperative has not carried out any business for more than two years;
- d) the cooperative has violated the duty to create an indivisible reserve;

e) the cooperative is in violation of Paragraph 3, Section 56;

f) the law has been violated as a result of the establishment, consolidation, or merger of the cooperative.

(2) Before making a decision to terminate a cooperative, the court may set a deadline for the elimination of the reason for which the termination was recommended.

### Section 258

(1) The membership meeting may decide that a cooperative, which was established for a time specific, shall continue its business even after the expiration of this time.

(2) However, such decision must be made before the distribution of assets has begun.

### Section 259

(1) If the law does not specify otherwise, a terminated cooperative enters upon liquidation. Liquidators are appointed by the method listed in the bylaws of the cooperative; otherwise, they are appointed by the membership meeting.

(2) Prior to distributing the assets, liquidators are required to prepare recommendations for distributing them to be discussed by the membership meeting. Upon request, a copy of the recommendation for distribution must be provided to any member of the cooperative.

(3) The assets are distributed among the members by the method stipulated in the bylaws. If the bylaws do not specify otherwise, the members are paid the paid-in portion of their membership investments. The remaining assets are then distributed among those members whose memberships as of the day the cooperative was terminated had lasted at least one year. If the bylaws do not indicate otherwise, the remaining assets are distributed among these members at a ratio at which they share in capitalization of the cooperative. The appropriate provisions of Section 234, Paragraph 1, apply in cases where non-cash assets are to be returned.

(4) Every member of a cooperative or any other authorized person may propose, within three months from the day a membership meeting is held, that the court declare the resolution of the membership meeting regarding the distribution of the remaining assets to be invalid because it conflicts with laws or with the bylaws. If the court acquiesces to the proposal, it will also decide on the distribution of the remaining assets. For three months or until the court renders its final decision, the remaining assets may not be distributed.

### Section 260. Use of Regulations Governing Business Corporations

Unless otherwise specified by this chapter, cooperatives are subject to the appropriate provisions of Chapter I, Article I (Sections 56 through 75), of this portion of the law.

## PART THREE. BUSINESS CONTRACTS

### CHAPTER I. General Provisions

#### Article I. Legal Considerations

##### Section 261

(1) This part of the law regulates business contracting, when it is apparent at their inception that they are in fact concern their business operations.

(2) This part of the law is also used to regulate contractual relations between the government or an autonomous territorial unit and business operations, where these activities involve providing for public needs. For this purpose, government agencies writing contracts to satisfy public needs, even if not engaged in business per se, are considered to be representing the government.

(3) This part of the law regulates contractual relations, regardless of the type of participants, between the following:

a) between the founders of companies, between a partner and a company, as well as among partners;

b) between founders of cooperatives and between members and cooperatives;

c) those resulting from stock exchange transactions and brokerage (Section 642);

d) relations arising as a result of a contract to sell a company or a part of a company (Section 476), loan contracts (Section 497), audit contracts (Section 591), contracts with forwarding agents (Section 601), transportation contracts (Section 638), contracts on silent partnerships (Section 673), open letters of credit (Section 682), collections (Section 692), contracts covering bond investments and other securities (Section 700), contracts covering current accounts (Section 708), and investment account contracts (Section 716);

e) bank guaranty (Section 313), traveler's checks (Section 720), and promissory notes of indemnification (Section 725).

(4) This part of the law regulates relations arising of satisfaction of contractual obligations under the preceding provisions of law as well as real estate foreclosures in securing promissory notes (Section 297).

(5) In using this portion of the law according to Paragraphs 1 and 2 above, the decisive factor is the type of participation at the time the contract comes into being.

(6) Contracts between individuals listed in Paragraphs 1 and 2 above which are not regulated in Chapter II of this law, and are fall under contractual type of relations governed by the Civil Code, are subject only to the provisions of the Civil Code. However, barter contracts concerning parties to business transactions are subject to appropriate provisions of this law on purchase contracts; in satisfying obligations to deliver goods, each of the parties has the standing of a seller and, at the time goods are accepted, the standing of a purchaser.

### Section 262

(1) Parties may agree that their contracting relations which are not subject to provisions of Section 261 above shall be governed by this law.

(2) An agreement under provisions of Paragraph 1 above must be in written form.

(3) These provisions of the law also govern those relations which come into being as a result of meeting requirements of contracts for which the parties have elected to use the provisions of Paragraph 1 of this law, provided the individual providing the security so agrees or is aware at the time of the surety that the secured obligation is governed by this portion of the law.

### Section 263

The parties may deviate from the provisions of this part of the law or they may exclude its individual provisions, with the exception of the provisions of Section 261 and Section 262, Paragraph 2; Sections 263 through 272; Section 273, Paragraph 1; Sections 276 through 289, 297, 298, 303, 304; Section 306, Paragraphs 2 and 3; Section 301; Section 311, Paragraph 1; Sections 312, 313; Section 321, Paragraph 4; Sections 324, 341, 365, 370, 371, 376, 382, 384, 386 through 408, 444, 458, 459, 477, 478; Section 479, Paragraph 2; Sections 480, 481; Section 483, Paragraph 3; Sections 488, 493, 499; Section 509, Paragraph 1; and Sections 592, 597, 669, 711, 720, 725, 729, and 743.

### Section 264

(1) In determining the rights and responsibilities resulting from a contract, generally accepted business practices are also taken into consideration, provided they do not in conflict with the provisions of the contract or of the law.

(2) Those business practices which are to be considered in the contract take priority over provisions of this law which are not compulsory in character.

### Section 265

The exercise of a right which is in conflict with the principles of fair business practices does not enjoy the protection of the law.

## Article II. Provisions Concerning Legal Actions

### Section 266

(1) The intent is interpreted to mean the intention of the contracting party, provided the second party to contract was or should have been aware of the intentions of the first party.

(2) In cases where the intent cannot be interpreted in accordance with Paragraph 1 above, the intent will be interpreted in accordance with the generally accepted significance attributed to it by the person who is in the position of the party to whom it was intended. Business terms used are assumed to have the meaning they have in generally accepted business practices.

(3) In interpreting an intent according to Paragraphs 1 and 2 above, appropriate consideration is given to all circumstances having to do with the intent, including negotiations engaged in by contracting parties and the practices which they have introduced, as well as the subsequent conduct of the parties, constrained by the subject matter.

(4) An intent which permits various interpretations shall, in cases of doubt, be interpreted to the detriment of the party that first used such expression in the negotiations.

(5) If, according to these provisions of law, a decisive factor is the headquarters, the location of a plant or production facility, or the domicile of a party to the contract, then the location identified in the contract prevails, unless the change has been communicated to the second party.

### Section 267

(1) In the event, voiding conditions of a legal action are stipulated to protect one of the parties, only that party may void the contract.

(2) In relations subject to this law, provisions of Section 49 of the Civil Code do not apply.

(3) If a part of an otherwise void contract is an agreement to use rights under this law (Section 262) or an agreement to negotiate a conflict between contracting parties, such agreements are void only to the extent that the voiding principle applies them. The voiding of these separate agreements does not void the contract of which they are a part.

### Section 268

Anyone voiding a legal action is required to indemnify the person in whose favor the legal action was intended, unless that person knew of the legal action to be void. Indemnification provisions for violation of contractual duties (Section 373 and following sections) are applicable for covering this type of damages.

## Article III. Contracting Provisions

### Segment 1. Contract Negotiations

#### Section 269

(1) The provisions regulating individual types of contracts included under Chapter II of these provisions of law shall be used only for contracts, the contents of which, as agreed upon by the parties, encompasses substantial portions of the contract stipulated in the provisions covering each of these contracts.

(2) Parties may also conclude non-standard contracts. However, if the parties do not adequately identify the subject of their obligations, such a contract is considered to be null and void.

(3) An agreement concerning a part of contract may be substituted by an agreement of both parties making possible a later decision on the contract subject to the extent that it does not depend on the intent of only one of the parties to contract. If the missing part of the contract is to

be determined by the courts and a specific individual, the contract must be in writing and provisions of Article 291 apply.

### Section 270

(1) A separate agreement included in the contract providing that certain items not affecting the substance of the current contract may be subject to subsequent negotiation is considered to constitute a condition of the contract's validity, unless the parties expressly state that any subsequent negotiations will not affect the validity of the initial contract. In case of any doubt, the condition has a delaying effect.

(2) In the event the parties agree in writing, in cases listed in Paragraph 1 above, that the missing items of the contract are to be determined by a court or by an individual identified in the agreement, provisions of Section 291 apply. The agreed-upon portion of the contract does not become effective until the missing items are agreed upon or determined and it becomes void with the failure to agree upon the missing items of the contract (Section 292, Paragraphs 4 and 5), unless the parties have agreed that the initial contract is to remain in effect.

### Section 271

In the event the parties to contract negotiations mutually exchange information marked confidential, the party to whom this information was made available must not reveal its contents to a third party nor use it in case of conflict with the purposes of the contract for its own benefit, without regard as to whether the contract will be concluded or not. Anyone violating this obligation is liable for any damages in a manner similar to the provisions of Section 373, etc.

### Section 272

(1) A contract must be in writing only in cases stipulated in this law or if at least one of the parties to the contract negotiations indicates an intent to have the contract concluded in written form.

(2) If a written contract contains provisions that it can be altered or voided only by mutual agreement of the parties in writing, then the contract can be altered or voided only in writing.

### Section 273

(1) Parts of the contract can also be qualified by reference to generally accepted business practices developed by specialized or special-interest organizations or by referring to other business practices known to the parties to contract or to contract attachments.

(2) Nonstandard contract agreements take precedence over the language of business practices referred to in Paragraph 1 above.

(3) For purposes of commercial contracting, standard contract forms may be used.

### Section 274

In the event the parties to a contract include a supplemental clause used and adjusted from general rules, it is assumed that the parties intended to use this clause to achieve the legal effects established by the general rules to which the parties to contract refer; otherwise, it is assumed that they intended these clauses to be used in the generally accepted business practice.

### Section 275

(1) If several contracts result from the same negotiations, or in the event several contracts are included in one package, each of these contracts is judged independently.

(2) However, if the nature of the contracts in Paragraph 1 above clearly indicates, or if the parties to the contract are aware that the contracts clearly that these contracts are mutually dependent, then each of the contracts conditions the writing of the other contracts. The voiding of one of these contracts by any means other than its fulfillment or a by a method substitution for its fulfillment causes the expiration of the dependent contracts and does so with related legal consequences.

(3) The provisions of Paragraph 2 are also invoked in the event the type or the purpose of the contracts indicate that only one or several of these contracts are dependent upon one or several of other contracts.

(4) In view subject of a contract or as a result of practices which the parties have introduced among themselves or in consideration of the commonly used practices which are decisive according to this law, the party for whom the proposal is intended may express its approval with the proposal to undertake a certain action (for example, deliver the merchandise or pay the purchase price) without notifying the proposing party. In such case, the acceptance of the contract becomes effective at the time such action was taken, provided it took place prior to the expiration of the deadline which was decisive for accepting the proposal.

### Article 2. A Public Offer To Contract and Its Effects

#### Section 276

(1) An intent to address unidentified parties for purposes of concluding a contract is a public offer to contract (hereinafter referred to as "public offer"), provided it is in compliance with provisions outlined in Section 269.

(2) The initiative of offer to contract which is not covered under provisions of Paragraph 1 above is considered to be only a proposal for an offer to contract.

#### Section 277

A public offer may be recalled, if the proposing party announces the recall conditions prior to publishing the proposal for an offer to contract.

#### Section 278

An public offer to contract is considered to be concluded with a party which, complying with the public offer to contract provisions and the time limit provided, or otherwise within an reasonable time period, first notifies the

proposing party of his acceptance and the offeror agrees to the contract. In the event several people accept the public offer, the offeror may choose which contract to accept.

### Section 279

(1) The offeror is required to accept the contract of the offeree without undue delay after receiving the proposed acceptance according to Section 278.

(2) In the event the offeror accepts the contract upon expiration of the time limit stipulated in Paragraph 1, the contract does not come into being, if the offeree rejects the contract and notifies the offeror upon receiving the late acceptance of the contract from the offeror.

### Section 280

If a proposal for a public offer expressly so states, a contract is made with all individuals who accepted the public offer within the time limit stipulated.

### Article 3. Invitation To Bid

#### Section 281

Anyone who publishes a general invitation to bid on contract (hereinafter only "contracting officer") makes an offer to accept bids on a contract (hereinafter only contract).

#### Section 282

(1) The invitation to bid (hereinafter referred to as "bidding") requires that the required contract bid specification be issued in writing by generally accepted practices and that it include the purpose intended by contracting party, the method for submitting proposals, the bidding time limits, and the date for announcing the selection of the most successful bidder (hereinafter only "bidding requirements").

(2) The bidding requirements must be published in an appropriate form.

#### Section 283

The contracting party may not alter the published bidding requirements or cancel the bidding unless he has reserved the right to do so in the published bidding requirements or has published the changes or cancellation using the same method used in issuing the invitation to bid.

#### Section 284

(1) A proposal can be incorporated in the bid only if it corresponds to the published bidding requirements. The proposal may deviate from the bidding requirements only to the extent allowed by the invitation to bid.

(2) It is not possible to include proposals in the bid which were submitted after the deadline stipulated in the invitation to bid.

(3) The bidders have the right to claim compensation for expenditures connected with the bidding process only if this right is recognized in the bidding requirements.

### Section 285

(1) A submitted proposal cannot be recalled after the expiration of the deadline given in the bidding requirements for submitting proposals unless the bidding requirements provide for the right of proposing parties to recall a proposal after expiration of this deadline. The requirements to bid may stipulate that a proposal cannot be recalled once it has been submitted.

(2) A proposal can be amended only during the time it can be recalled according to Paragraph 1 above unless it resulted from errors in compilation and the bidding requirements do not exclude the possibility of making such corrections. A proposal can be amended under conditions stipulated in the bidding requirements.

### Section 286

(1) The contracting officer shall select the most suitable of the submitted proposals and shall announce its acceptance by the method and within the time limit specified in the bidding requirements.

(2) If the bidding requirements do not specify a method of selecting the most suitable proposal, the contracting officer is authorized to select the most suitable bid.

### Section 287

(1) The contracting officers is required to accept a proposal which has been selected by the method listed in Section 286. If the contracting officer communicates the acceptance of a proposal after the expiration of the time stipulated in the conditions of competition, a contract does not come into being if the selected bidder notifies the contracting officer without delay, upon receiving the notification that his proposal has been accepted, that he will not accept the contract.

(2) The contracting officer is authorized to reject all submitted proposals, provided this right was reserved in the published bidding requirements.

### Section 288

Upon determination of the winning bid, the contracting officer is required to notify the unsuccessful bidders without delay.

### Article IV. Agreement To Conclude a Future Contract

#### Section 289. Basic Provisions

(1) An agreement to conclude a future contract requires one or both parties to contract to conclude the future contract with the intent to comply with the terms and conditions within the time prescribed.

(2) This agreement must be in written form.

#### Section 290

(1) The contracting party is committed to conclude a contract without delay following the request to do so by the second party in agreement with the agreement to conclude a future contract.

(2) In the event the contracting party fails to conclude a contract in accordance with Paragraph 1 above, the second party may require that the court determine the terms of contract or that a person designated in the contract do so or may demand compensation for damages caused by the violation of the agreement to conclude a contract. Apart from being able to demand that the terms of contract be determined, the second party may assert its claim for damages only in the event the contracting party illegally refused to negotiate the closing of the contract.

### Section 291

The provisions of Section 290 and Section 292, Paragraphs 1 and 2, are also applicable to written agreements between the parties regarding the fact that certain items of the concluded contract will be amended on incomplete terms of contract which are to be determined by the court in accordance with this agreement or by another party identified by the parties to contract in cases that the parties to contract are unable to reach agreement on the missing terms. The requirement to amend the terms of contract may be raised by one or both of the parties; in case of doubt, it is assumed that both parties are liable.

### Section 292

(1) The terms of a contract are determined in light of the intent of the future contract, taking into account circumstances under which the agreement to conclude a future contract was reached, as well as the principle of fair trade.

(2) The right to have the court or a person identified in the contract determine the terms of the future contract and the right to claim damages in accordance with Section 290, Paragraph 2, above is forfeit upon the expiration of one year from the day the second party asked the contracting party for the contract in accordance with Section 290, Paragraph 1, above, unless the agreement to conclude a future contract specifies a different time limit. However, the agreed-upon time limit may not exceed the statute of limitations based on Section 391 and other provisions of this law.

(3) A requirement to conclude a future contract becomes extinguished if the second party does not require contracting party to meet this obligation within the time specified in the agreement to conclude a future contract.

(4) The requirement to amend the terms of the contract becomes extinguished if the second party does not require the contracting party to meet this obligation within the time limit provided in the agreement to amend the terms of contract (Section 291); otherwise, it expires within one year of the time this agreement was concluded.

(5) The requirement to sign a future contract or to amend incomplete terms of contract also expires when it is clear that the conditions at the inception of this contract have changed so much that the contracting party cannot be reasonably be required to conclude the contract. However, this extinguishment only takes place if the contracting party has announced this change of circumstances without delay to the first party.

## Subchapter V. Selected Provisions on Joint Obligations and Joint Rights

### Section 293

In the event several individuals are required to perform jointly, they are considered to be jointly and severally liable in cases of doubt. A creditor may demand performance of any one of them, but is required to accept any performance offered by one of the joint debtors.

### Section 294

If a contract or the nature of the liability indicates that the debtors are not required to perform jointly and severally, each co-debtor is only liable to the extent of his share in the security. In cases of doubt, co-debtors are equally liable.

### Section 295

In the event several individuals take on a liability, the nature of which indicates that it can be met only by the joint action of all co-debtors, the co-debtors are required to meet the liability jointly.

### Section 296

In the event a debtor is simultaneously indivisible liability to several creditors, satisfaction of the liability may be demanded by any one of the creditors, provided the law or the contract in question do not specify otherwise.

## Article VI. Securing a Liability

### Segment 1. General Provisions on Mortgage Rights

### Section 297

(1) Mortgage rights can come into being even on the basis of a security issued according to special regulations, provided that the security identifies the manner in which surety is to be provided for any claims resulting from the mortgage rights certain real estate (mortgage security).

(2) A mortgage right comes into being as a result of its registration on the basis of an understanding by the security issuer and the owner of the real estate involved in accordance with regulations governing the registration of mortgage contracts. The issuer of mortgage security is required to list the cumulative total of secured claims based on the issuance of these securities in the real estate records and may not place them in circulation until after it has been recorded.

### Section 298

The individual authorized to assert his rights based on a mortgage security has the standing of a mortgage creditor.

### Section 299

(1) Mortgage rights can be established to run for a specific period of time, for a specific amount, and covering a specific type of liability which may accrue to the mortgage creditor with reference to the debtor in the future.

(2) In exercising his mortgage rights, the mortgage creditor may sell a mortgaged real estate or another secured property he holds or which he is entitled to dispose of at public auction, provided he notifies the mortgagee and debtor of

this intended enforcement of his mortgage rights in sufficient time; if the contract so specifies, the mortgage creditor can sell his securities by another suitable method as well.

(3) The mortgage creditor shall pay the debtor, without delay, those proceeds from the sale which exceed the debtor's secured pledge, after subtracting his reasonably expended costs.

#### **Segment 2. Selected Provisions Governing Contract Penalties**

##### **Section 300**

Circumstances which preclude responsibility (Section 374) are without effect upon the liability to pay contractual penalties.

##### **Section 301**

The court can reduce a disproportionately high contractual penalty, taking into account the value and importance of the secured liability and can do so up to the level of the damages which have occurred until the time of court decision as a result of a violation of the contractual liability to which the contractual penalty applies. The damaged party is entitled to compensation for damages which occur later up to the amount of the contractual penalty in accordance with Section 373 and subsequent sections.

##### **Section 302**

Voiding of a contract has no bearing on claims involved in the payment of contractual penalties.

#### **Segment 3. Guaranty**

##### **Section 303**

Anyone who declares to the creditor in writing that he will satisfy his claims when the debtor fails to meet a specific liability, becomes the debtor's guarantor.

##### **Section 304**

(1) A guaranty may be extended to cover a valid liability of the debtor or a part of that liability. However, a guaranty is not prevented from coming into being if the liability of the debtor is invalid because of the debtor's unsuitability to take on liabilities—an unsuitability of which the guarantor was aware at the time he provided his guaranty.

(2) The guaranty may also be extended to a liability which will come into being in the future or the inception of which is dependent upon the fulfillment of certain conditions.

##### **Section 305**

The creditor is required to notify the guarantor without delay, upon a request, of the amount of his secured claim.

##### **Section 306**

(1) A creditor is entitled to seek the satisfaction of a liability by a guarantor only in cases where the debtor failed to make his due payment at a reasonable time after the creditor has requested him to do so in writing. This request is not necessary if the creditor is not in a position

to make it or if there is no doubt that the debtor will not fulfill his liability, particularly as a result of a request for bankruptcy protection.

(2) A guarantor may assert all of the objections with respect to the creditor to which the debtor would be entitled and may use any claims the debtor has against the creditor if the debtor was entitled to include them in the event the creditor were to pursue his claim against him. The guarantor may also include his claims against the creditor.

(3) In the event the guarantor exercises unsuccessful objections against the creditor—objections which were communicated to him by the debtor—the debtor is required to indemnify the guarantor for any expenditures which occurred in this regard.

##### **Section 307**

(1) If the same liability is guaranteed by several guarantors, each of them is liable for the entire liability. A guarantor has the same rights as a codebtor with respect to the other guarantors.

(2) If the guaranty extends only to a portion of a liability, the scope of the guaranty is not discharged by a partial satisfaction of the liability until liability has been satisfied to the full extent covered by the guaranty.

(3) In the event a secured claim is subjected to assignment, the rights based on the guaranty are transferred to the assignee at the time the assignment is announced by the assignee to the guarantor or is proven by the assignee.

##### **Section 308**

A guarantor who performs on a liability that he has guaranteed acquires creditor rights against the debtor and is entitled to demand all documents and aids in the possession of the creditor that are necessary to assert his claim against the debtor.

##### **Section 309**

In the event a guarantor satisfies the creditor without the knowledge of the debtor, the debtor may assert all objections against the guarantor which he was authorized to assert against the creditor if the creditor were to demand performance of him. However, the debtor may not assert any objections against the guarantor to which the debtor has not drawn the guarantor's attention without delay after receiving the news that the creditor has asserted the claims based on the guaranty.

##### **Section 310**

The rights of the creditor against a guarantor do not expire prior to the expiration of the creditor's rights against the debtor.

##### **Section 311**

(1) The guaranty expires with the expiration of the secured liability.

(2) However, the guaranty does not expire if the liability was discharged because the debtor was unable to satisfy it

and if the liability can be satisfied by the guarantor, or as a result of a termination of a legal entity which is also the debtor.

### Section 312

The provisions of Sections 305 through 311 are also applicable for guarantees which come into being on the basis of the law.

#### Article 4. Bank Guaranty

### Section 313. Basic Provisions

A bank guaranty enters into being as the result of a written statement by a bank entered in the guaranty register, that it will satisfy a creditor up to a certain amount based on the contents of the guaranty record, in the event a certain third party (the debtor) fails to satisfy a certain liability or in the event other conditions which are stipulated in the guarantee list are met.

### Section 314

If a nonmonetary claim is secured by a bank guaranty, it is assumed that the amount listed in the guaranty register shall also secure a monetary claim which the creditor might have against the debtor in the event the debtor were to fail to discharge his obligations secured by the bank guaranty.

### Section 315

(1) In the event a bank guaranty is supported by another bank, the creditor may assert his claims based on the bank guaranty against either of these banks.

(2) In the event a bank which has provided the guaranty has satisfied the claim based on that guaranty, it is entitled to collect this amount from the bank which requested it to certify the bank guaranty.

(3) In the event a bank announces that another bank has provided a guarantee, the announcing bank does not acquire any liability on the basis of that guarantee. However, the announcing bank is responsible for any damage resulting from an incorrect announcement.

### Section 316

(1) A bank guarantees the satisfaction of a secured liability up to the amount and under the conditions of the recorded guaranty. The bank may raise only those objections against the creditor which are specified by the guaranty register.

(2) A bank guarantee is not affected by partial satisfaction of a liability by the debtor if the remainder is the same or higher than the amount listed in the guarantee list.

### Section 317

Unless provided otherwise in the guaranty specifications, the bank may not assert any of the objections a debtor might be entitled to assert against a creditor and a bank is required to discharge its duties once it has been asked to do so by the creditor in writing. The above request that a debtor satisfy his liabilities is only required if specified by the guaranty.

### Section 318

If the guaranty provides that the creditor is entitled to assert his rights based on the bank guaranty only in the event the debtor fails to satisfy his liability, the creditor may assign his rights based on a bank guaranty only by also assigning the claim which is secured by the bank guaranty.

### Section 319

A bank shall satisfy its liability based on its guaranty only if it has been requested to do so in writing by the creditor. If bank satisfaction is based on a bank guarantee conditional upon the presentation of certain documents, as listed in the guaranty register, these documents must be presented upon request and without delay.

### Section 320

If, based on the guaranty, the bank is required to satisfy its liabilities to the benefit of the debtor with respect to another bank, it is required to do so on the account of the debtor with that bank.

### Section 321

(1) In the event the due date provided by the guaranty is limited, the bank guaranty expires if the creditor does not notify the bank in writing of any claims based on the bank guaranty while it is in effect.

(2) The debtor is required to compensate the bank for satisfying its liabilities based on the guaranty granted on basis of a contract concluded with the debtor.

(3) The debtor may not exercise any objections against the bank which he might assert against the creditor, if the contract between the bank and the debtor does not specify the bank liability to include satisfaction of the objection against the creditor.

(4) A creditor who, on the basis of a bank guaranty, has achieved performance to which he was not entitled with reference to the debtor shall refund the debtor this amount and indemnify him for any damages caused by his action.

### Section 322

(1) Bank guaranty is subject to the appropriate provisions governing guaranty.

(2) The relationship between the bank and a debtor is governed by provisions of agency contracts.

#### Article 5. Acknowledgment of Liability

### Section 323

(1) If anyone acknowledges a liability in writing, it is assumed that the liability is in force in the amount and at the time of acknowledgment. These conditions apply also in cases where a claim by a creditor has already expired at the time of acknowledgment.

(2) Legal actions listed in Section 407, Paragraphs 2 and 3, are also considered to be acknowledgments of an unexpired liability.

(3) Acknowledgment of a liability also has consequences for the guarantor.

**Subchapter VII. Expiration of a Liability as a Result of Its Settlement****Article 1. Method of Settlement****Section 324**

(1) A liability is discharged if it is settled properly and on time.

(2) A liability also expires as a result of late settlement by the debtor unless the liability had already expired prior to this settlement as a result of the creditor's withdrawal from the contract.

(3) If the debtor provides defective settlement and the creditor does not have the right to withdraw from the contract or does not make use of this right, the terms of the liability are changed by a method which reflects the claims of the creditor which resulted from the defective settlement and the liability is discharged when these claims are satisfied.

(4) The provisions of Paragraphs 2 and 3 do not apply to claims for damages and for contractual penalties.

**Section 325**

In case of mutual liabilities, only the party which has already discharged its liability or which is ready and able to settle simultaneously with the second party, is entitled to demand settlement from the other party, unless the contract, the law, or the nature of one of the liability provide otherwise.

**Section 326**

(1) If one party is required to discharge its liability before the other party does, it may decline to settle its liability until such time that a settlement by the other party is forthcoming or adequately secured, if it becomes apparent that the terms contract may not be met by the other party either as a result of either its inability to do so or because of its conduct while preparing to discharge the liability.

(2) In cases listed in Paragraph 1, the entitled party may set an appropriate time limit in which the second party must provide additional assurance that settlement will take place and that, after expiration of this time limit, it may then withdraw from the contract. Without this deadline, the first party may withdraw from the contract if the second party assets fall under the bankruptcy protection law.

(3) As long as Paragraphs 1 and 2 do not indicate otherwise, none of the parties is authorized to decline settlement or to withdraw from the contract because a liability assumed by the other party in another contract was not settled properly or on time.

**Section 327**

(1) If it is possible to settle a liability in several ways, the debtor has the right to choose the method of settlement, unless the contract specifies this right to be the creditor's. However, if the creditor does not specify this method

within a time stipulated in the contract, or within the time stipulated for settlement, the debtor can determine the method of settlement.

(2) If, on the basis of his rights, the debtor or the creditor who is so authorized elects a method for settlement of a liability and notifies the other party, he may not, without the approval of the other party, change this method.

**Section 328**

In the event subject of liability settlement is classed by type, the debtor is obligated to provide the creditor with a similar suitable item in accordance with the standard business practices.

**Section 329**

A creditor is required to accept a partial settlement of a liability, as long as the partial settlement is not in conflict with the nature of the liability or with the business purposes being pursued by the creditor at the time he concluded the contract or, provided this purpose is specified in the contract or is known to the debtor at the time the contract was concluded.

**Section 330**

(1) If creditor has several liabilities with respect to the same debtor and if the partial settlement is not sufficient toward discharging all liabilities, then the debtor determines which liability is to be settled first. If the debtor does not identify the liability he is discharging, the first due liability will be settled first, beginning with its appurtenances.

(2) In settling a monetary liability, the payment is first allocated to interest and then to principal, unless the debtor specifies otherwise.

(3) If a debtor has several monetary liabilities toward one creditor and the debtor does not specify which liability he is settling, the payment is allocated first to that liability which is not secured or has the least amount of security attached to it, otherwise, it is allocated to the liability which is due first.

(4) Payments are allocated to compensate for damages only after the monetary liability, the violation of which has resulted in the duty to compensate for damages, has been paid off, unless the debtor specifies a different purpose of the payment.

**Section 331**

In the event a debtor settles his liability through another party, he is liable to the same extent as if he were discharging the liability himself, provided this law does not specify otherwise.

**Section 332**

(1) Provided the settlement of an liability is not tied to the personal assets owned by the debtor, the creditor is required to accept settlement of the liability offered by the third party, provided the debtor agrees. The debtor's concurrence is not required if the third party provides a

guaranty for the liability or secures its settlement by another method and if the debtor has violated his requirements.

(2) Provided the legal relationship between the debtor and a third party does not indicate otherwise, the third party assumes the rights of the creditor by settling the debtor's liability and the creditor is required to provide him with all contract documentation.

### Section 333

(1) If the creditor accepts settlement directly, the debtor is entitled to require him to certify the subject and extent of the settlement and is entitled to reject that certification if it is not issued to him at that time.

(2) In the event the debtor provides settlement of a liability to a person who presents a certificate by the creditor that he has accepted settlement, the settlement has consequences as though it were provided by the debtor to the creditor himself.

### Section 334

The opening of a letter of credit, as well as the issuance of a draft or check in settlement of a cash liability under the terms of the contract, have no influence upon the duration of this liability. However, the creditor is entitled to demand the settlement of a cash liability in accordance with the contract only in the event he cannot achieve its settlement on the basis of a letter of credit, a draft, or a check.

## Segment 2. Location of Settlement

### Section 335

For purposes of regular discharge of a liability, it is required that it be liability be discharged at a specified location.

### Section 336

If the place of settlement is not specified in the contract and provided nothing else is indicated by the nature of the liability, the debtor is obligated to settle the liability at a location where the contract was concluded, his place of business, or his domicile. However, if a liability has come into being in connection with a business operation or the debtor's operating facility, the debtor is obligated to settle the liability at the location of that business or of that facility.

### Section 337

(1) A debtor settles a cash liability at his own risk and at his own cost at the headquarters or location of business or at the domicile of the creditor, unless the contract or this law specify otherwise.

(2) If the creditor changes his address or place of business or domicile after concluding the contract, he is responsible for any costs and the greater risks incurred by having the debtor pay off such an liability.

### Section 338

In the event a cash liability has come into being as a result of the operation of a plant or place of business of the creditor, the debtor is obligated to settle this liability at the location of the plant or business facility where the settlement of the cash liability is to take place simultaneously with any settlement to be undertaken by the second party at the location of this plant or place of business.

### Section 339

(1) It is also possible to discharge a cash liability at the creditor's bank, to the creditor's account, provided this is not in conflict with the payment conditions agreed upon between the parties.

(2) A cash liability discharged through a bank is settled by the act of depositing the payment to the creditor's account at his bank. In the event the cash liability is paid off through the postal banking services, it is considered settled at the time the amount is paid out to the creditor.

## Subchapter 3. Time of Settlement

### Section 340

(1) A debtor is required to settle an liability in the time stipulated in the contract.

(2) In the event the time for settlement is not specified in the contract, the creditor is entitled to demand settlement of the liability immediately upon concluding the contract and the debtor is obligated to settle the liability without delay after being requested to settle by the creditor.

### Section 341

If, under the terms of contract, the debtor is entitled to specify time of settlement and he does not do it within a reasonable time, the time of settlement shall be set by the court, at the creditor's request, taking into consideration the nature and location of settlement, as well as the reason why the setting of time for settlement was left to the debtor.

### Section 342

(1) Unless the contract or the provisions of this law specify otherwise, the intent of the parties, demonstrated at the time the contract is concluded, or the nature of settlement are decisive with respect to determining whether the time of settlement is set to favor both parties or only one of them.

(2) If the time of settlement is set to benefit the debtor, the creditor is not entitled to demand settlement prior to this time, although the debtor is entitled to discharge his liability earlier.

(3) In the event the time of settlement is set to benefit the creditor, the creditor is entitled to demand settlement prior to this time, but the debtor is not compelled to settle earlier.

(4) In the event the time of settlement is set to benefit both parties, the creditor is not entitled to demand settlement

prior to that time, nor is the debtor authorized to discharge his liability prior to that time.

### Section 343

If a debtor settles a cash liability prior to the settlement time prescribed, he may not, without the approval of the creditor, deduct any interest for the time involved in the early settlement from the amount he owes.

## Article VIII. Provisions for Terminating Failed Contracts

### Segment 1. Withdrawal From the Contract

#### Section 344

Only in cases stipulated in the contract or in this law is it possible to withdraw from the contract.

#### Section 345

(1) If deferral on the part of the debtor (Section 365) or on the part of the creditor (Section 370) constitutes substantial violation of that individual's liabilities, the other party is authorized to withdraw from the contract, provided the party in arrears is notified without delay, following the time this violation became known.

(2) For purposes of this law, violation of a contract is substantial if the violating party knew at the time the contract was being concluded or if it was reasonable to predict at that time, from the purpose of the contract and using as evidence the subject of the contract, or from the circumstances under which the contract was concluded, that the second party did not intend to discharge its liabilities, given such a violation of the contract. In case of a doubt, it is assumed that the violation of the contract is not substantial.

(3) In the event the party which is entitled to ask for settlement of contract from the second party notifies that party that the liability is due, or if it does not make timely use of the right to withdraw from the contract according to Paragraph 1 above, it is authorized to withdraw from the contract only by a method stipulated as applying to insubstantial violations of contract; if that party sets a deadline for a later settlement, it acquires the right to withdraw from the contract after expiration of this time limit.

#### Section 346

(1) If deferral on the part of the debtor or creditor amounts to insubstantial violation of a contract, the second party may withdraw from the contract if the first party, which is in arrears, fails to settle its liability even after additional reasonable time has been allowed for that purpose.

(2) However, if the party in arrears declares that it will not settle its liability, the second party can withdraw from the contract without making additional time available for settlement or prior to the expiration of this time.

#### Section 347

(1) In the event the deferral on the part of the debtor or creditor involves only a part of the liability due, the other

party is authorized to withdraw from the contract only on the basis of settlement pertaining to that part of the liability.

(2) In the case of contracts with partial payments, it is possible to withdraw from the contract only with reference to that partial settlement by which the debtor is in arrears.

(3) With regard to that portion of the settlement which is not in arrears or regarding a partial settlement which has already been accepted or is yet to be made in the future, it is possible to withdraw from the contract if that part of the settlement or partial settlement clearly has no economic significance for the authorized party in view of its nature without the remainder of the settlement which is in arrears or if failure to settle the liability as a whole means a substantial violation of the contract.

#### Section 348

(1) A liability which is to be discharged in the future, it is possible to withdraw from the contract if the conduct of the second party, or other circumstances, leave no doubt, even prior settlement of the liabilities, that the terms of contract will be violated substantially and that the encumbered party will not provide adequate security after being asked to do so by the claimant without delay.

(2) With regard to a liability to be settled in the future, it may be possible to withdraw from the contract if the encumbered party declares that it will not settle.

#### Section 349

(1) Withdrawal from the contract, terminates the contract, if the intent to withdraw is communicated by the claimant to the encumbered party; thereafter, the consequences of withdrawing from the contract cannot be appealed or changed without approval of the first second party.

(2) The claimant may not withdraw from a contract after he has received the news that the liability, the violation of which was a reason for withdrawal from the contract, has been settled.

(3) If the terms of contract indicate that the creditor has no interest in discharging the liability after the time set for settlement, the consequences of withdrawing from the contract arise at the time the debtor falls into arrears, unless the creditor has indicated earlier that he insists on settling the liability.

#### Section 350

(1) If the additional time made available for settlement is unreasonable and if the claimant withdraws from the contract after its expiration, or if the claimant withdraws from the contract without making additional time available for settlement, the consequences of withdrawing from the contract do not arise until after the vain expiration of the extended deadline which was to be made available for settlement.

(2) In making additional time available, the claimant may inform the second party that it is withdrawing from the contract if the latter fails to settle its liability within that time limit. In such case, the consequences of withdrawing

from the contract arise upon the vain expiration of deadline, provided it was reasonable, or at the regular expiration of a deadline, if the deadline was not adequate.

### Section 351

(1) Withdrawal from a contract results in termination of all rights and liabilities of the contracting parties. However, withdrawal from a contract leaves untouched the claim for damages resulting from violation of the contract, as well as terms of contract related to choosing the rights or choosing provisions of this law according to Section 262, the settlement of disputes between the contractual parties and other provisions which, in accordance with the demonstrated intentions of the parties or in view of their nature, are expected to continue in effect even after the contract is terminated.

(2) A party receiving settlement from the other party prior to withdrawing from the contract shall refund this settlement; in the case of a cash liability, the refund shall include interest agreed upon in the contract for such instances, otherwise as stipulated in Section 502. If a party is refunding a settlement, the party which has withdrawn from the contract has the right to be compensated for related costs.

### Segment 2. Selected Provisions Covering Additional Inability To Settle

#### Section 352

(1) A liability is considered to be performing if it is possible to settle with the mediation of a third party.

(2) A liability becomes non-performing if legal provisions without expiration were issued after the contract was concluded and if their effectiveness is not time-limited, if they prohibit the debtor from conduct to which he obligated himself, or if they require official authorization, which was not granted to the debtor although he made honest efforts to obtain it.

(3) A creditor may withdraw from the contract concerning its terms which under which settlement cannot be reached if, in view of its nature or in view of the purpose of the contract, as evidenced by its terms, or if the purpose of the contract was known to the other party at the time the contract was concluded, loses its trade significance without a settlement which has become impossible. The same holds true for partial settlements.

(4) The debtor is obligated to document the fact that settlement cannot be reached.

#### Section 353

A debtor whose liability was terminated due to inability to perform is required to cover any damages caused the creditor by this fact, unless the inability to perform on the liability was brought about by circumstances beyond his control (Section 374). For purposes of compensating for damages, the provisions of Section 373 and subsequent sections apply.

### Section 354

The termination of liability due to inability to perform in whole or in part leads to consequences similar to those listed in Section 351.

#### Subchapter 3. Compensation

### Section 355

(1) If the parties to contract agree that one of the parties or either of the parties is authorized to terminate the contract by paying a certain sum as compensation for withdrawing, then the contract is terminated as of the date it became effective, if the claimant notifies the first party that it intends to exercise his rights and pay the stipulated compensation for withdrawing from the contract. The provisions of Section 351, Paragraph 1, above are also applicable with respect to the consequences of terminating a contract.

(2) The rights outlined in Paragraph 1 above do not accrue to the party which has already accepted settlement of a liability from a second party or a portion of the settlement or which has settled its liability in full or in a part.

### Segment 4. Nullifying the Purpose of a Contract

#### Section 356

(1) If, following the conclusion of a contract, the specifically expressed terms therein are nullified a result of a substantial changes in the circumstances which led to the conclusion of the contract, the effected party may withdraw from the contract.

(2) A change in the circumstances according to Paragraph 1 above is not considered to be a change in the asset relations of one or another party and or a change in the economic or market situation.

#### Section 357

The party which has withdrawn from a contract according to Section 356 is required to compensate the other party for damages which have resulted from the withdrawal from the contract. For the consequences of withdrawing from the contract, provisions of Section 351 apply appropriately.

### Article IX. Provisions on Crediting of Claims

#### Section 358

Claims which can be sustained before a court are can be credited. However, crediting of such claims is not precluded if the claim has lapsed but the lapse occurred only after the claims became creditable.

#### Section 359

A claim which is not due cannot be credited against a claim which is due unless the claim is against a debtor who is unable to perform upon a cash liability.

**Section 360**

It is also possible to credit claims which are not due only because the creditor, at the request of the debtor, has deferred the due date for the liability without changing any other terms.

**Section 361**

Any party which, on the basis of a contract, maintains a demand or time deposit account may use assets in these accounts only for crediting any mutual claims it has against the owner of the accounts the terms of contract for maintaining these accounts.

**Section 362**

Cash claims involving various currencies are creditable only if these currencies are freely convertible. For purposes of the creditable amount of these claims, the decisive factor is the average foreign exchange rate on the day the claim became due to be credited. The foreign exchange rate in effect at the place of domicile or place of business of the party which has demonstrated its intent to credit the claim is applicable.

**Section 363**

In the event a claim has been gradually transferred to several individuals, the debtor may only use the claim he had against the first creditor at the time this transfer was accomplished for purposes of crediting and against the last creditor.

**Section 364**

On the basis of an agreement between the parties, it is possible to credit mutual claims.

**Article X. Violation of Terms of Contract and Its Consequences****Segment 1. Default by the Debtor****Section 365**

A debtor is in default if he fails to meet his obligations with diligence and on time, up to the time of regular settlement or to the time the liability is discharged by another method. However, a debtor is not in arrears if he is unable to perform on his liability as a result of default on the part of the creditor.

**Section 366**

Unless provided otherwise for individual types of contracts, the creditor may insist on the regular settlement of the liability if the debtor is in default.

**Section 367**

If a debtor is in default, the creditor is entitled to demand compensation for damages according to Section 373 and following sections. He is entitled to withdraw from the contract in cases stipulated by law or in the contract.

**Section 368**

(1) If a debtor is in defaults in delivering or returning an item to creditor or if he handles an item, which he is

supposed to deliver or return to the creditor, contrary to the responsibilities imposed by the contract, he assumes full liability for the item involved, if he did not already have the burden of this liability, for the duration of the time he is in default or is in violation of these responsibilities.

(2) Within the meaning of this law, liability for an item is incurred by its loss, destruction, damage, or other impairment, regardless of the reason for such damage.

(3) The debtor is required to compensate the creditor for damages to an item, provided such damage occurred during a time he was at liable as to danger of damage to the item involved, unless such damage was caused by the creditor or by the owner of the item or if such damage would result even if the debtor did meet his responsibilities. For purposes of compensation, the determinant factor is the loss in value of the item involved, taking into account its value prior to the time the damage occurred. Entitlements to compensation for other damages according to Section 373 and subsequent sections remain in effect.

**Section 369**

(1) If a debtor is in default in settling a cash claim or a part of such a claim and if late charges are not agreed upon, the debtor is obligated to pay late charges on the unpaid portion as stipulated in the contract; otherwise, he shall pay 1 percentage point more than the interest rate as determined in accordance with Section 502.

(2) The creditor is entitled to compensation for damages caused by a default on cash claims only if such damages are not covered by late charges.

**Segment 2. Creditor Default****Section 370**

A creditor is in default if, contrary to his responsibility, based in the contract, he does not accept an honestly offered settlement or does not show a necessary willingness to cooperate to allow the debtor to meet his responsibilities.

**Section 371**

(1) A debtor may require a creditor who is in default to meet his responsibility, unless provided otherwise by law.

(2) A debtor is entitled to demand compensation for damages, in accordance with Section 373 and subsequent sections, of a creditor who is in default. In cases specified by the law or in the contract, the debtor may withdraw from the contract.

**Section 372**

(1) If the objective of settlement is an item which the creditor declines to accept contrary to his responsibility, the risk for damages to the item transfers to the creditor during such delay (Section 368, Paragraph 2), particularly if this risk was previously assumed by the debtor.

(2) If the item is damaged while in the custody of the creditor, the debtor is not obligated to replace or to remove

it, unless the damage was caused as a result of the violation of the debtor's responsibilities.

### Segment 3. Compensation for Damages

#### Section 373

Anyone who violates the responsibility arising from a contract is obligated to compensate for the damage thus caused to the other party, unless it can be proven that the violation of the liability was caused by circumstances beyond his control.

#### Section 374

(1) Circumstances voiding responsibility to perform on contract are considered to be obstacles independent of intentions of the encumbered party which prevent the performance on contract, provided it cannot be reasonably assumed that the encumbered party might avert this obstacle or its consequences or overcome them and that, at the time the contract came into being, an occurrence this obstacle could be foreseen.

(2) Responsibility is not precluded by an obstacle which did not occur until the encumbered party was in default on his obligations or which occurred due to his business conditions.

(3) Consequences precluding performance on contract are limited only to the duration of the obstacle with which they are connected.

#### Section 375

If violation of a liability arising from contract was caused by a third party, entrusted by the responsible party with meeting his obligations, the encumbered party can claim exclusion only in cases where responsibility is excluded in accordance with Section 347 and provided the third party could not be held responsible under these provisions, or if it were directly obligated to the claimant instead of to the encumbered party.

#### Section 376

The damaged party is not entitled to compensation if the failure to meet the obligations of the encumbered party was caused by the actions of the damaged party or by a lack of cooperation, which the damaged party would be expected to provide.

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[Text]

#### Section 377

(1) The party in violation of its responsibilities, considering all circumstances, should be aware of being in violation based on the terms of contract, it is required to inform the second party of the nature of the obstacle which prevents it or will prevent it from meeting its responsibilities and of the possible consequences. This information must be provided without delay, at the time encumbered party found out about it or could have found out about it by exercising proper diligence.

(2) If the encumbered party fails to meet its obligations or the claimant is not informed in sufficient time, the damaged party has a right to compensation for damages.

#### Section 378

Damages are paid in cash; however, if the claimant so requests and if it is possible and customary, compensation may be made by restoring the assets to its previous condition.

#### Section 379

If this law does not specify otherwise, compensation encompasses the actual damage as well as lost profits. Compensation for damages which exceed the damage anticipated by the responsible party as a possible consequence of a violation at the time the contract came into being or which it was possible to anticipate, considering all facts which were known to the encumbered party at the time of contract or which it should have known through the exercise of due diligence, are not compensated.

#### Section 380

Damage is also considered to include losses which the damaged party suffered by having to expend resources as a result of the violation by the other party.

#### Section 381

In place of profits actually lost, the damaged party can demand compensation for profits generally achieved as a result of common business practices under conditions similar to those surrounding the contract violation within the similar type of business.

#### Section 382

The damaged party is not entitled to compensation of that part of the damages resulting from its failure to meet its obligations as outlined by regulations issued to prevent the occurrence of similar damages or of limiting their scope.

#### Section 383

In the event several individuals are required to compensate for damages, these individuals are obligated to compensate for these damages jointly and severally and can reach a settlement among themselves, based on the extent of their responsibilities.

#### Section 384

(1) A person facing the threat of damages is required, under the given circumstances, to take measures necessary to avoid the damage or to mitigate it. The encumbered individual is not required to compensate for damages which have resulted from the fact that the damaged party did not meet his duties.

(2) The encumbered party has the duty to compensate for expenses incurred by the second party in meeting its obligations outlined in Paragraph 1 above.

#### Section 385

If, as a consequence of contract violation by the second party, the damaged side has withdrawn from the contract,

it is not entitled to compensation for damages which occur as a result of the fact that it did not make timely use of the opportunity to conclude a substitute contract for the same purpose for which the contract from which the damaged party has withdrawn was intended to serve.

### Section 386

- (1) The right to compensation for damages cannot be given up prior to a violation which might result in the damage.
- (2) The court may not reduce the amount of compensation for damages.

## Subchapter XI. Statute of Limitations

### Article 1. General Provisions

#### Section 387

- (1) A right expires with the statute of limitations stipulated by law.
- (2) All rights based in contracts, with the exception of the right to withdraw from a contract concluded for an indefinite period, are subject to statute of limitations.

### Segment 2. Consequences of Expiration of Statute of Limitations

#### Section 388

- (1) Although status of limitations does not terminate the right to require the other party meet its obligations, it cannot be recognized as such or sanctioned by a court if the encumbered party invokes the statute of limitations after its expiration.
- (2) Even after expiration of the statute of limitations, the claimant may assert his rights as part of its defense or in support of their case if:
  - a) both rights pertain to the same contract or to several contracts concluded on the basis of a single negotiation or several related negotiations; or
  - b) if the right could be used at any time prior to the expiration of the statute of limitations to be invoked against a claim asserted by the other party.

#### Section 389

If a debtor has met his obligations after the expiration of the statute of limitations, he is not entitled to demand the refund for a settlement even if he did not know at the time of settlement that the statute of limitations had already expired.

#### Section 390

If the right to carry out a legal act lapses, the consequences of that legal act do not accrue to the individual who invokes the statute of limitations.

### Segment 3. Beginning and Duration of the Statute of Limitations

#### Section 391

- (1) With respect to rights which are assertable before a court, the statute of limitations begins on the day it was possible to assert the right before a court, provided this law does not specify otherwise.
- (2) With respect to rights involving the carrying out a legal acts, the statute of limitations begins to run on the day it was possible to carry out the legal act, provided this law does not specify otherwise.

#### Section 392

- (1) With respect to the right to settle, the statute of limitations begins to run on the day the liability was to be settled or on the day its settlement should have begun (the due date). In the event the terms of contract involve the duty to perform on a continuous basis, to cease and desist from a certain action, or to suffer something to happen, the statute of limitations begins to run from the moment this duty has been violated.
- (2) With respect to the right to a partial settlements, the statute of limitations runs separately for each partial payment. If, as a result of the failure to make a partial payment, the entire liability becomes due and payable, the statute of limitations runs from the time the violation.

#### Section 393

- (1) With respect to rights accruing as a result of the violation of duties, the statute of limitations begins to run on the day the duty was violated, provided there are no special regulations covering the statute of limitations for some of these rights.
- (2) With respect to rights based on defective items, the statute of limitations begins to run on the day these items are delivered to the claimant or to a person designated by him or from the day the duty to accept the items was violated. With respect to claims based on the guarantee of the quality of items, the statute of limitations always begins to run from the day of the notification of the defect during the guarantee period and, with respect to claims based on legal defects, from the date of assertion of such rights by a third party.

#### Section 394

- (1) As to rights which result from withdrawal from a contract, the statute of limitations begins to run on the day the authorized party withdrew from the contract.
- (2) As to the right to refund a previous settlement in accordance with an invalid contract, the statute of limitations begins to run from the day settlement was made.
- (3) As to the right to compensation for damages according to Section 268, the statute of limitations begins to run from the day the legal transaction became void.

### Section 395

As to the right to demand return of deposited or stored items and delivery of items under the term of contract on depositing of securities and other valuables, the statute of limitations runs from the day the contract on deposit of items, the contract on storing of items, or the contract on the deposit of securities or other valuables expires. This does not affect the right to demand that the item be delivered on the basis of ownership rights.

### Section 396

As to the right to cash assets in demand deposit or savings accounts, the statute of limitations runs as of the day the contract on maintaining these accounts expires.

### Section 397

Unless the law specifies otherwise as to individual rights, the statute of limitations runs for four years.

### Section 398

With respect to the right to compensation for damages, the statute of limitations runs from the day the damaged party found out or could have found out about the damage and about who is liable for the damages; however, it terminates, at the latest, at the end of 10 years from the day of violation.

### Section 399

Rights based on damage to transported items or from late deliveries, which can be exercised against the forwarder and the shipper, lapse at the expiration of one year. As to rights based on the total destruction or loss of a shipment, the statute of limitations begins to run on the day the shipment was to be delivered to the recipient; with respect to other rights, it runs from the day the shipment was to be delivered. Damages which are knowingly caused are subject to the general statute of limitations outlined in Section 397.

### Section 400

A change in the person of debtor or creditor has no influence upon the running of the statute of limitations.

### Section 401

The party against which a the statute of limitations is being invoked may, by a written declaration extend the the other party's statute of limitations, even repeatedly; the statute of limitations, however, may not exceed 10 years from the time it first began to run. Such declaration may be prepared even before the statute of limitations begins to run.

### Subchapter 4. Arrangement and Interruption of a Statute of Limitations

### Section 402

The statute of limitations ceases to run if the creditor, in order to satisfy or assert his rights, takes a legal action which is considered, under the provisions of the court having jurisdiction, to be the initiation of such an act or an assertion of rights in an already initiated proceeding.

### Section 403

(1) The statute of limitations ceases to run in the event the creditor has initiated, on the basis of a valid arbitration agreement, arbitration proceedings by a method stipulated in the arbitration agreement, or contained in the rules governing such arbitration proceedings.

(2) If it is not possible to determine when the arbitration proceedings outlined in Paragraph 1 began, arbitration proceedings are considered to have begun on the day when the proposal, that a decision be made in arbitration proceedings, is delivered to the other side at its home office, the location of its business, or a domicile.

### Section 404

(1) In the event a right which is subject to the statute of limitations was asserted before a court or before arbitration proceedings in the form of a counterclaim, the statute of limitations ceases to run on the day the court or arbitration proceedings were initiated with regard to the right against which the counterclaim is made, if both the claim and also the counterclaim concern the same contract or the same several contracts concluded on the basis of a single negotiation or on the basis of several related negotiations.

(2) In cases not subject to the provisions of Paragraph 1 above, the counterclaim is considered as having been asserted on the day a proposal to discuss it was submitted in court or to arbitration proceedings.

### Section 405

(1) In the event a right has been asserted prior to the expiration [of the statute of limitations] in accordance with Sections 402 through 404 above, and a decision regarding the item per se has not been reached, the statute of limitations is not considered to have ceased running.

(2) If the statute of limitations has already expired at the time the court proceedings or the arbitration proceedings listed in Paragraph 1 have ended, or if less than a year remains until its expiration, the statute of limitations is extended so as not to expire earlier than one year from the day the court proceedings or arbitration proceedings are concluded.

### Section 406

(1) Court proceedings or arbitration proceedings initiated against one co-debtor result in stopping the statute of limitations clock with regard to proceedings against another co-debtor who has a joint and several liability based on the claim, provided the creditor has notified him in writing of the initiation of proceedings prior to the expiration of the statute of limitations.

(2) If court proceedings or arbitration proceedings are initiated against a creditor, whose statute of limitations rights are expiring, by a third party on a liability which the creditor satisfied by using payments made available by the debtor, the statute of limitations applicable to the rights of the creditor stops running, provided he has notified the

debtor in writing that the above proceedings have been initiated against him prior to the expiration of the statute of limitations.

(3) In the event the proceedings listed in Paragraphs 1 and 2 are concluded, it is considered that the statute of limitations regarding the rights of the creditor has not ceased running, but will not expire any earlier than one year following the conclusion of these proceedings.

#### Section 407

(1) If a debtor acknowledges his liability in writing, a new four-year statute of limitations period begins as of the time of this acknowledgment. In the event the acknowledgment refers only to a part of an liability, a new statute of limitations period begins with respect to that part.

(2) The payment of interest charges is considered to be an acknowledgment of a liability with respect to the amount on which interest is paid.

(3) If a debtor makes a partial payment toward his liability, this payment is considered to be an acknowledgment of the remainder of the debt, provided that it can be inferred that the debtor is acknowledging the remainder of the liability as well by making this payment.

(4) The consequences of acknowledging a liability by the method listed in Paragraph 1 above apply also in cases in which the rights have already expired at the time of the acknowledgment.

#### General Limitations on the Statute of Limitations

#### Section 408

(1) Without regard to any other provisions of this law, the statute of limitations expires, at the latest, 10 years from the day it first began to run. However, it is not possible to invoke an objection to the statute of limitations in court or in arbitration proceedings which were initiated prior to the expiration of this time limit.

(2) If the right was legally granted in court or arbitration proceedings less than three months prior to the expiration of the statute of limitations or after its expiration, the decision may be legally enforced if the proceedings regarding the enforcement were initiated within three months of the day such proceedings could have been initiated.

### CHAPTER II. Special Provisions for Commercial Contracting

#### Article I. Purchase Contract

##### Subchapter 1. Purchase Contract Definition

#### Section 409. Basic Provisions

(1) The seller promises to sell to a purchaser certain goods (merchandise) identified either individually or by type and quantity and to deliver to him the ownership to such chattel and the purchaser promises to pay the purchase price.

(2) The contract must contain the agreed-upon purchase price or must at least specify the method by which it will be determined, unless the parties to contract show intent to conclude a contract even without determining a purchase price. In such a case, the purchaser is required to pay a purchase price determined under provisions of Section 448.

#### Section 410

(1) A contract to deliver goods to be manufactured is considered to be a purchase contract unless the party to whom the merchandise is to be delivered has promised to transfer to the other party a substantial portion of materials required in production of the specified goods.

(2) A purchase contract is not considered to be a contract if a substantial part of liability by the party which is to deliver the goods consists of a service or where its liability includes assembly of the goods.

#### Subchapter 2. Seller Liability

#### Section 411

The seller is obligated to deliver merchandise to the purchaser, to transfer documents pertaining to the merchandise, and to make it possible for the purchaser to acquire ownership rights to the merchandise under the terms of contract and within the provisions of this law.

#### Goods Delivery

#### Section 412

(1) If the seller is not required by contract to deliver merchandise to a specific location, delivery of goods takes place when it is delivered to the first shipper on behalf of the purchaser, if the contract specifies that the seller must ship the merchandise. The seller shall enable purchaser to exercise his rights based toward the shipper, based on shipping contract, unless the purchaser has the rights on the basis of a shipping agreement.

(2) In the event the contract does not contain provisions covering the shipment of goods by the seller and the merchandise is identified individually or by type in the contract, but is to be delivered out of a specific lot or is to be manufactured and the parties to the contract were aware, at the time the contract was concluded, where the merchandise is located or where it is to be fabricated, delivery is deemed to have been accomplished when the purchaser has received control of the goods at that location.

(3) In cases not subject to the provisions of Paragraphs 1 and 2 above, the seller complies with the delivery of merchandise by facilitating the purchaser's control over the goods at seller's location or place of business, his domicile or another organizational component, provided the seller notifies the purchaser of the location in time.

#### Section 413

If delivery of goods takes place by its shipment and the goods being delivered to a shipper is not clearly and adequately marked as a shipment for the purchaser,

delivery is only deemed to have taken place if the seller notifies the purchaser of the shipment without delay and specifically identifies the goods. In the event the seller does not do so, delivery is not deemed to have taken place until the merchandise is delivered by the shipper to the purchaser.

#### Section 414

(1) The seller is required to deliver the goods:

- a) on the date specified in the contract or to be determined by a method noted in the contract;
- b) during the time specified in the contract or determined by the method stated by the contract, unless it is clear from the contract or from the purpose of the contract, which is known to the seller at the time the contract is being concluded, that the time of delivery within the deadline is to be determined by the purchaser.

(2) Unless the contract specifies differently, the time limit during which the merchandise is to be delivered begins on the day the contract is concluded. If, however, according to the contract, the purchaser must meet certain requirement prior to delivery of the merchandise (for example, if he must present engineering drawings necessary for the production of the merchandise, if he must pay the purchase price or a part of it, or if he must ensure that it will be paid), this time limit does not begin to run until the day such requirements have been met.

(3) If the seller delivers the merchandise prior to the specified time, the purchaser is entitled to either accept the merchandise or reject it.

#### Section 415

Unless general business practices or customs involving the parties do not indicate otherwise, the following terms are understood to be applicable for determining contract deadlines:

- a) "at the start of the period" means the first 10 days of that period;
- b) "in the middle of the month" means from the 10th to the 20th day of the month;
- c) "in the middle of the quarter" means the second month of the quarter;
- d) "by the end of the period" means the last 10 days of the period;
- e) "immediately" means within two days for foodstuffs and raw materials, 10 days for engineering products, and five days for all other types of goods.

#### Section 416

In the event the time of delivery of merchandise is not agreed upon, the seller is required, without being asked to do so by the purchaser, to deliver the merchandise within a reasonable time, considering the character of the merchandise and the location where it is to be delivered.

### Goods Documentation

#### Section 417

The seller is required to provide the purchaser with documents which are necessary for the acceptance and use of the merchandise involved, as well as other documents stipulated in the contract.

#### Section 418

The transfer of documents not subject to the provisions of Section 419 is accomplished at a time and place specified in the contract, otherwise, on delivery of the merchandise at the location specified. If the seller has transferred such documents prior to the stipulated time, he has until that stipulated time to eliminate any defects in the documents, provided this does not cause difficulties for the purchaser or result in added expenses. The entitlement to compensation for damages is untouched by this provision.

#### Section 419

(1) Documents required for acceptance of delivered merchandise, a free disposition of such merchandise, or for purposes of customs tax payment in case of importations, must be transferred by the seller to the purchaser at the location at which the purchase price is paid, provided this transfer is to take place at the time of this payment; otherwise, this transfer must be accomplished at the location or place of business or the domicile of the purchaser.

(2) The documentation listed in Paragraph 1 above is transferred by seller to the purchaser in sufficient time to allow the purchaser to freely dispose of the merchandise involved or to accept delivered merchandise at the time of arrival at its destination and, with respect to imported merchandise, in time to allow for payment of customs duties without delay.

### Quantity, Quality, Workmanship, and Packaging of Merchandise

#### Section 420

(1) The seller is required to deliver the goods in the quantity, quality, and workmanship specified by the contract and must package it or provide for its shipment by a method specified in the contract.

(2) If the contract does not specify the quality or the workmanship for the merchandise involved, the seller is required to deliver merchandise of a quality and workmanship which is suitable for the purpose specified in the contract or, in the event this purpose is not specified in the contract, for purposes for which such merchandise is generally utilized.

(3) If merchandise is to be delivered in accordance with a sample or a model, the seller must deliver merchandise having the characteristics of the sample or the model which he has presented to the purchaser. If there is a dispute in determining quality or workmanship of merchandise in accordance with the sample or model and the identification of merchandise described in the contract, the identification of the merchandise described in the

contract is decisive. If there is no dispute in these determinations, then the goods are required to exhibit characteristics in accordance with both determinations. (4) If the contract does not specify how the merchandise is to be packaged or handled during shipment, the seller is obligated to package the merchandise or handle it by a method which is customary for such merchandise in trade or, if this method cannot be determined, by the method necessary to preserve and protect the merchandise in question.

#### Section 421

(1) If the contract indicates only an approximate quantity of goods, the seller may determine the exact amount of goods to be delivered, unless the contract reserves that right to the purchaser. If the contract does not indicate otherwise, any deviation from these terms may not exceed 5 percent of the quantity indicated by the contract.

(2) If the nature of merchandise indicates that the quantity is only approximate, the difference between the quantity of goods listed in the contract and the quantity of merchandise actually delivered may not exceed 5 percent of the contracted amount unless earlier contracts between the parties or customary business practices do not indicate otherwise.

(3) In cases to which Paragraphs 1 and 2 above apply, the seller has the right to claim payment of the purchase price for goods actually delivered.

#### Defective Goods

##### Section 422

(1) In the event the seller violates the provisions of Section 420, the goods are defective. Delivery goods other than of the contracted type and defective documentation necessary to make use of the goods are considered to be a defect in the goods themselves.

(2) If the shipping manifest, the document indicating that the goods have been delivered, or the declaration of the seller make it clear that he is delivering goods in a lesser quantity or only part of the goods, the missing goods are not subject to the provisions on defective goods.

##### Section 423

If, according to the contract, the manufacturer of goods used materials supplied by purchaser, the seller is not responsible for defects to merchandise which were caused by using these materials if, by using specialized and diligent care, the seller was unable to uncover the unsuitability of these items for the production of goods or if he has notified the purchaser of such defects, but the purchaser insisted on their use.

##### Section 424

The seller is not responsible for defective goods about which the purchaser knew at the time the contract was being concluded or in view of the circumstances under which the contract was concluded should have known about them, unless the defects involved characteristics required by the contract.

#### Section 425

(1) The seller is responsible for defects which the goods have at the moment the risk of damage to the goods is assumed by the purchaser, even if the defect does not become apparent until after that time. The duties of the seller based on a warranty of quality of goods are untouched by this circumstance.

(2) The seller is likewise responsible for any kind of defect which becomes evident after the time listed in Paragraph 1 above if such a defect is caused by a violation of his duties.

#### Section 426

If the seller delivers goods prior to the time stipulated for this delivery with the approval of the purchaser, he has until the actually stipulated delivery time to deliver a missing part or quantity of the delivered goods, to deliver replacement merchandise for delivered defective goods, or to repair defects in delivered goods, provided the exercise of this right does not cause the purchaser disproportionate difficulties or expenses. However, the purchaser reserves the right to claim compensation for the damages.

#### Section 427

(1) The purchaser is required to inspect the goods as soon as possible after assuming the danger of damage to the goods, taking the nature of the goods into consideration.

(2) In the event the contract specifies that the goods shall be shipped by the seller, this inspection may be deferred until such time that the goods have arrived at their destination. However, if the goods are intended for another destination during the course of shipment or are to be reshipped to the purchaser without the purchaser having the opportunity appropriate to the nature of the goods to inspect them and if, at the time the contract was being concluded, the seller knew or should have known of the possibility of such a change of destination or such a re-transport, the inspection can be deferred until the time the merchandise arrives at the final destination.

(3) If the purchaser does not inspect the goods or arranges for the goods to be inspected at the time he assumes the risk of damage to the goods, he may assert any claims based on defects which are discernible from such inspection only if he proves that the goods already had this defect at the time he assumed the risk of damage occurring to the goods.

#### Section 428

(1) The purchaser's rights based on defective goods may not be recognized in a court hearing unless the purchaser notifies the seller of the defects without delay after:

- a) the purchaser has found the defects;
- b) the purchaser, exercising due care and diligence, should have found the defects during the inspection which he is required to perform according to Section 427, Paragraphs 1 and 2; or
- c) the defects may have been found later, exercising due and diligent care, but at the latest within two years from

the time they were delivered or from the time the goods reached their destination as per contract. For defects under warranty, this time limit is replaced by the warranty period.

(2) The consequences listed in Paragraph 1 above considered only if the seller raises objections during court proceedings, indicating that the purchaser did not fulfill his duty to notify the seller of defects in sufficient time.

(3) The consequences of Paragraphs 1 and 2 are not invoked if defects in merchandise are the result of facts which were known to the seller or which he should have known at the time of the delivery of the goods.

### Quality Guarantee

#### Section 429

(1) By providing a warranty on the quality of goods in writing, the seller guarantees that delivered goods will, for a specified period of time, be suitable for use for the contractual or otherwise customary purposes or that they will retain their contractual or customary characteristics.

(2) The warranty can derive from the contract or from a declaration of the seller, particularly in the form of a written certificate. The assumption of this liability is also inherent in designation of the length of the warranty period, durability, or usefulness of the delivered goods on the package. If the contract or the guarantee statement made by the seller lists a different guarantee period, that is the guarantee period which is valid.

#### Section 430

If the terms of contract or warranty do not indicate otherwise, the warranty period begins to run on the day on which the goods are delivered. If the seller is required to ship the goods, the warranty period begins to run as of the day the goods arrive at their destination. The warranty period does not run during the time during which the purchaser is unable to utilize the goods because of defects for which the seller is responsible.

#### Section 431

The seller is not responsible for defects covered by the quality guarantee if such defects were caused after the expiration of damage to the goods through external factors has passed and if such damage was not caused by the seller or by individuals with whose assistance the seller met his obligations.

#### Section 432

Defects to goods covered by warranty are also subject to the provisions of Sections 426 through 428 and Sections 436 through 441.

### Legal Defects to Goods

#### Section 433

(1) Goods are considered to have legal defects if the sold merchandise is encumbered by the rights of a third party, unless the purchaser has agreed to the restriction.

(2) If the rights of a third party which are encumbering the goods are based on industrial or other intellectual ownership, the goods are considered to have a legal defect under the following circumstances:

a) if this right enjoys legal protection under the Legal Code of the country on whose territory the seller is located, his place of business, or his domicile; or

b) if the seller, at the time the contract, knew or should have known that this right enjoys legal protection under the Legal Code of the state on whose territory the purchaser is located, has a place of business, or domicile or according to the Legal Code of the state where the goods were to be sold or used and if the seller was aware of this sale or location of utilization at the time the contract was being concluded.

#### Section 434

A claim based on legal defects does not arise if the purchaser knew about the rights of the third party at the time of contract or if the seller, under the terms of the contract, was required to proceed in accordance with documents which were submitted to him by the purchaser in the fulfillment of his duty.

#### Section 435

(1) The intent to exercise rights under Section 433 by a third party, given the nature of this right, must be communicated by the purchaser to the seller without delay at the time he learned of the facts.

(2) The purchaser's rights based in legal defects to goods cannot be recognized in a court proceeding if the purchaser has not complied with his responsibilities under Paragraph 1 above and if the seller records objections against the purchaser's non-compliance.

(3) These consequences do not arise if the seller was aware of the third party rights at the time the purchaser became aware of this information.

(4) Provisions of Sections 436 through 441 apply to claims by the purchaser based on legal defects to goods.

### Claims Based on Defective Goods

#### Section 436

(1) If delivery of defective goods substantially violates the contract (Section 345, Paragraph 2), the purchaser may:

a) demand the correction of the defects by delivery of replacement merchandise to replace defective goods; he may demand delivery of missing merchandise and the elimination of any legal defects;

b) demand the elimination of the defects by having the goods repaired, if the defects are repairable;

c) demand a suitable reduction in the purchase price; or

d) withdraw from the contract.

(2) The choice between the claims listed in Paragraph 1 above accrues to the purchaser only if he informs the seller by communicating the defects in reasonable time following

this communication. The purchaser may not change the claim made without the approval of the seller. However, if it turns out that the defects to the goods are irreparable or that disproportionately high costs would be involved in making such repairs, the purchaser may demand delivery of substitute goods, provided he asks the seller that he comply without delay at the time the seller has notified him of this fact. In the event the seller does not eliminate the defects within a reasonable additional time or if he states, prior to the expiration of this time limit, that he will not eliminate the defects, the purchaser may withdraw from the contract or may demand an appropriate reduction in the purchase price.

(3) If the purchaser does not communicate which of the claims he has opted for within the time limit listed in Paragraph 2, he is entitled to assert claims based on defective merchandise as if the contract had been violated in an insubstantial manner.

(4) In addition to the claims specified in Paragraph 1 above, the purchaser is entitled to compensation of damages, as well as to contractual penalties, provided these have been agreed upon.

#### Section 437

(1) If delivery of defective goods violates the contract in an insubstantial manner, the purchaser may demand either the delivery of the missing goods and the elimination of the other defects to the goods or a reduction in the purchase price.

(2) As long as the purchaser does not exercise his right to a reduced purchase price or does not withdraw from the contract in accordance with Paragraph 5 below, the seller is required to deliver any missing goods and to eliminate legal defects. He is obligated to eliminate other defects by repairing the merchandise or by delivering replacement goods, according to his own choice; however, he must not cause the purchaser undue expenses as a result of the elected method of eliminating defects.

(3) If the purchaser demands that the defects in the goods be eliminated, he may not, prior to the expiration of the additional time allowed, which he is obligated to grant the seller for these purposes, assert any other claims based on defects to the goods other than a claim for compensation of damages and for contractual penalties, unless the seller informs the purchaser that he will not meet his responsibilities within the time limit.

(4) Unless the purchaser specified the time limit under Paragraph 3 or asserts his claim to have the purchase price reduced, the seller can inform the purchaser that he will eliminate the defects within a certain time limit. If the purchaser does not inform the seller of his disapproval of the above without delay, after receiving this communication, then this communication has the effect of determining the time limit in accordance with Paragraph 3.

(5) If the seller does not eliminate the defects to the merchandise within the time limit specified in Paragraphs 3 or 4, the purchaser may assert a claim to have the

purchase price reduced or may withdraw from the contract, provided he notifies the seller of his intention to withdraw from the contract at the time of setting the time limit in accordance with Paragraph 3 or within a reasonable time prior to withdrawing from the contract. The purchaser may not change the claim he has elected without the approval of the seller.

#### Section 438

In case substitute merchandise is being delivered, the seller is entitled to demand that the purchaser return the goods being exchanged at the seller's expense in the same state in which the goods were delivered. The provisions of Section 441 apply.

#### Section 439

(1) The entitlement to a reduced purchase price is commensurate with the difference between the value the merchandise would have without a defect and the value the merchandise had when it was delivered with defects, with the time during which regular performance of the contract was to be accomplished being the decisive factor in determining the value.

(2) The purchaser may reduce the purchase price paid to the seller by the amount of discount; if the purchase price has already been paid, the purchaser may demand the reimbursement of reduction, together with interest agreed upon in the contract; otherwise, the interest rate is similar to the rates indicated in Section 502.

(3) In the event the defect was not communicated in sufficient time (Section 428, Paragraph 1, and Section 435, Paragraph 1), the purchaser may only exercise his rights as outlined in Paragraph 2 with the approval of the seller, or he may make use of his right to a price reduction and have the seller's invoice reduced accordingly. This restriction does not apply in the event the seller knew of the defects at the time the goods were delivered; with respect to legal defects, the decisive time is the time stated in Section 435, Paragraph 1.

(4) Until such time that the defects are eliminated, the purchaser is not obligated to pay that portion of the purchase price which would be commensurate with his entitlement to a price reduction in the event the defects were not eliminated.

#### Section 440

(1) Claims based on defective goods have nothing to do with the claim for compensation of damages or a claim for contractual penalties. A purchaser who becomes eligible for a price reduction is not entitled to demand compensation for lost profits as a result of the inadequate characteristics of the goods involved in the price reduction.

(2) The satisfaction obtained by exercising one of the claims based on damaged goods according to Sections 436 and 437 cannot be satisfied by a claim for any other legal reason.

#### Section 441

(1) The purchaser may not withdraw from the contract if he did not notify the seller of defects on a timely basis.

(2) The consequences of withdrawal from the contract do not arise or are terminated if the purchaser is unable to return the merchandise in the same state in which he received it.

(3) However, the provisions of Paragraph 2 above do not apply:

- a) if the inability to return the goods in the state indicated above is not the result of the commission or omission on the part of the purchaser; or
- b) if the status of the goods was changed as a result of a correctly executed inspection for purposes of determining whether the goods were defective.

(4) The provisions of Paragraph 2 also do not apply if, prior to discovery of the defects, the purchaser sold the goods or part of the goods or has completely or partially consumed the goods or caused them to be changed as a result of their customary utilization. In that case, he is required to return the unsold or unconsumed portion of the goods or goods which were changed and to pay the seller compensation equal to the amount of profit resulting from the above-listed use of the goods.

#### Delivery of a Larger Quantity of Goods

##### Section 442

(1) If the seller deliver a larger quantity of goods than provided for in the contract, the purchaser may either accept or reject the excess goods.

(2) If the purchaser accepts the delivery of all or a part of excess goods, he is required to pay the seller the per unit purchase price stipulated in the contract.

#### Subchapter 3. Establishment of Ownership

##### Section 443

(1) The purchaser acquires ownership rights to the merchandise when the goods are delivered.

(2) Prior to delivery, the purchaser acquires ownership rights to the goods in transit at the time he receives authorization to dispose with the shipment.

##### Section 444

The parties can agree in writing that the purchaser will acquire ownership rights prior to the time listed in Section 443 above if the object of the purchase involves merchandise which can be identified or individually or by type and which, at the time of the transfer of ownership rights, shall be adequately marked to differentiate it from other merchandise by a method agreed upon between the parties; otherwise, by a method communicated to the purchaser without delay.

##### Section 445

The parties may agree in writing that the purchaser shall acquire ownership rights to the goods involved later than

those stipulated in Section 443. If this agreement on ownership rights does not imply anything else, it is considered that the purchaser intends to acquire ownership rights only after completing payment of the purchase price.

#### Section 446

The purchaser acquires ownership rights even if the seller is not the owner of the goods being sold unless the purchaser, at the time he was to acquire ownership rights, knew that the seller is not the owner and is not even entitled to dispose of the merchandise by sale.

#### Segment 4. Duties of the Purchaser

##### Section 447

The purchaser is required to pay for the goods at the purchase price and to accept the goods delivered under the terms of contract.

##### Section 448

(1) The purchaser is required to pay the agreed-upon purchase price.

(2) If the purchase price is neither stated in the contract nor a method for determining it has been established under the provisions of Section 409, Paragraph 2, the seller may demand payment of the purchase price at which identical or comparable merchandise was being customarily sold at the time of contract has been signed under contractual conditions similar to that contract.

(3) In the event the purchase price is by weight of the goods, net weight is decisive in case of doubt.

##### Section 449

In the event the purchase price is to be paid upon the transfer of the goods or documents, the purchaser is required to pay the purchase price at the location of such transfer.

##### Section 450

(1) Unless the contract indicates otherwise, the purchaser is required to pay the purchase price at the time the seller, under the terms of the contract and this law, makes it possible for the purchaser to dispose of the merchandise or provides him with documents facilitating disposal of the merchandise for the purchaser. The seller may make the transfer of documents or merchandise dependent upon the payment of the purchase price.

(2) If, according to the terms of the contract, the seller is to deliver the merchandise, he can do so and stipulate that the goods or the documents facilitating the disposal of the merchandise will be provided to the purchaser only upon payment of the purchase price, unless this condition is in conflict with the agreed-upon method of paying the purchase price.

(3) The purchaser is not required to pay the purchase price prior to inspecting the goods, unless the agreed-upon method of goods delivery or purchase price payment would be in conflict with this provision.

**Section 451**

The purchaser is required to take the actions required by the contract and by this law, to make it possible for the seller to deliver the goods. The purchaser is required to accept the delivered goods as long as the contract or this law does not indicate that he may reject acceptance of the goods.

**Section 452**

(1) If, according to the contract, the purchaser is to determine the size or character of the goods subsequently and if he does not do so within the agreed-upon time limit and if the time limit is not agreed upon within a reasonable time after the arrival of a request by the seller to do so, the seller himself can make that determination, taking into account the requirements of the purchaser, to the extent to which he is familiar with them. This provision has no effect on any other claims by the seller.

(2) If the seller has made the determination himself, he must communicate the detailed data on it to the purchaser and set a reasonable time limit within which the purchaser can communicate a different determination to the seller. If the purchaser does not do so after receiving such a communication within the specified time limit, the determination announced by the seller is binding.

**Section 453**

The seller may demand that the purchaser pay the purchase price, accept the goods, and meet his other duties unless the seller has exercised his rights based on violation of the contract, which is incompatible with this demand.

**Section 454**

If it was agreed that the payment of the purchase price would be secured, the purchaser is required, within or prior to the agreed-upon, to deliver to the seller documents which prove that the payment of the purchase contract has been secured under the term of contract. If the purchaser does not comply, the seller may refuse to deliver the goods until such time as the documents are transferred. If the purchaser does not secure the payment of the purchase price within a reasonable additional time limit, as stipulated by the seller, the seller may withdraw from the contract.

**Segment 5. Danger of Damage to the Goods****Section 455**

The danger of damage to the goods (Section 368, Paragraph 2) passes to the purchaser at the time he accepts the goods from the seller or, if he does not do so on time, at the time the seller makes it possible for him to dispose of the goods and the purchaser violates the contract by not taking over the goods.

**Section 456**

If the purchaser is to accept the goods from a person other than the seller, the danger of damage to the goods passes to the purchaser at the time stated for the delivery of goods

unless, at that time, the purchaser was given the opportunity to dispose of the goods and knew of this opportunity. If the purchaser is given an opportunity to dispose of the goods later, or if he does not learn of this opportunity until later, the danger of damage to the goods passes to him at the time he has this opportunity or learns of it.

**Section 457**

If, according to the contract, the seller is required to deliver goods to a shipper at a certain location for shipment to the purchaser, the purchaser assumes the danger of damage to the goods at the time the goods are transferred to the shipper at that location. If the purchase contract includes a provision requiring the seller to deliver goods, but the seller is not required to deliver the goods to a shipper at a certain location, the danger of damage to the goods passes to the purchaser at the moment the goods are transferred to the first shipper for shipment to their destination. The fact that the seller is able to dispose of documents pertaining to the merchandise being shipped has no influence on the change in the assumption of the risk that the goods will be damaged.

**Section 458**

However, the danger of damage to goods identified by type and not accepted by the purchaser does not pass to the purchaser as long as the merchandise is not clearly marked for purposes specified in the contract actually on the goods themselves or in the shipping documents or if the goods are identified in a report sent to the purchaser or are otherwise specified.

**Section 459**

The parties may agree among themselves that the danger of damage to the goods is assumed prior to the time listed in Sections 455 through 458 only if the merchandise involved is individually identified or if the merchandise is identified by type if such merchandise is adequately segregated during the period the danger of damage passes to another person and is distinguished from other goods of the same type.

**Section 460**

If, at the time of contract, the goods are already in transit, the danger of damage to the goods is transferred at the time of its delivery to the first shipper. However, in the event the seller knew at the time the contract was being concluded or should have known, taking all circumstances into account, that the goods have already been damaged, the seller is responsible for such damage.

**Section 461**

(1) Damage to goods which occurs after the danger of this damage has been assumed by the purchaser has no influence on the latter's liability to pay the purchase price, unless the damage to the goods occurred as a result of the seller violating his liability.

(2) The consequences listed in Paragraph 1 are not operant if the purchaser has made use of his right to demand delivery of replacement merchandise or of the right to withdraw from the contract.

#### **Subchapter 6. Excising Hold on Goods**

##### **Section 462**

In the event the purchaser is late in accepting delivered merchandise or in paying the purchase price, in cases where the delivery of goods and the payment of the purchase price is to take place simultaneously, and if the seller has the merchandise in his possession and may otherwise dispose of it, the seller must take measures which are appropriate to the circumstances to keep the merchandise. The seller is entitled to exercise a hold on the merchandise until such times as the purchaser compensates him for expenditures incurred by the seller.

##### **Section 463**

If the purchaser has taken possession of the goods and intends to reject the merchandise, he is obligated to take all measures commensurate with the circumstances to keep the merchandise. Until the seller compensates him for expenses arising as a result of this move, the purchaser is entitled to hold the merchandise which is to be returned to the seller.

##### **Section 464**

If, after transporting the goods to their destination, the purchaser has the opportunity to handle it and exercises his right to reject the merchandise, he is required to accept the merchandise and hold it at the expense of the seller, if he can do so without paying the purchase price and without incurring exceptional problems and expenditures. However, the purchaser does not incur this responsibility if the seller or a party designated by him to care for the merchandise is present at the destination of the merchandise. In cases where the purchaser accepts merchandise, his rights and responsibilities are governed by provisions of Section 463.

##### **Section 465**

The encumbered party can also meet its responsibilities under provisions of Sections 462 through 464 by storing the merchandise in question in a warehouse operated by a third party at the expense of the second party and may demand compensation for expenses incurred by such storage.

##### **Section 466**

The party which delays accepting the merchandise or accepting merchandise being returned, or paying the purchase price due upon acceptance of the merchandise, or paying of expenses related to responsibilities outlined in Sections 462 through 464 can be called upon to meet his obligations. The second party is authorized to respond to such call by setting a reasonable deadline and, following expiration of the deadline, sell the merchandise by a suitable method. Prior to such a sale, however, the second party is required to notify the encumbered party of the

intent to sell the merchandise. This intention may also be communicated at the time the deadline for acceptance of the merchandise is set.

##### **Section 467**

In case of perishable merchandise or if unreasonable costs are connected with keeping it, the party which is encumbered under provisions of Sections 462 through 464 must take appropriate measures to ensure its sale and, if possible, notify the second side of the intended sale.

##### **Section 468**

The party which has sold the merchandise is entitled to keep a portion of the proceeds from the sale as reasonable cost of doing business as outlined in Sections 462 through 464 and expense incurred in selling the merchandise. The remainder of the proceeds from the sale must be refunded to the other party without delay.

#### **Segment 7. Special Provisions Covering Compensation of Damages**

##### **Section 469**

If, under provisions of this law, one of the parties has withdrawn from the contract and if, within a reasonable time from the withdrawal, the purchaser has made an appropriate substitute or the seller has made a substitute sale of merchandise involved in the contract withdrawal, the entitlement for compensation of damages which have occurred, in accordance with this law, involves the difference between the purchase price which was to be paid on the basis of the contract and the price agreed upon in the substitute business transaction. In determining this difference, the terms of contract apply. The entitlement for compensation for any residual damage is not affected.

##### **Section 470**

(1) In cases not subject to the provisions of Section 469, the entitlement for compensation of damages on the part of the party which withdrew from the contract dealing with merchandise at current prices includes the difference between the purchase price which is to be paid on the basis of the contract and the current price achieved for merchandise of this type of identical or comparable quality under similar contract terms. The entitlement for compensation for residual damages is not affected.

(2) Prices achieved at the time of contract withdrawal are decisive; if, however, the merchandise was accepted prior to withdrawal from the contract, then current prices prevailing at the time the merchandise is accepted apply.

#### **Subchapter II. Agreements Connected With the Purchase Contract**

##### **Article 1. Purchase on Approval**

##### **Section 471**

A purchase on approval takes place as a result of a purchase contract with the condition that the purchaser shall approve the merchandise at the expiration of an approval period. If the contract does not specify the

approval period, it is considered to be three months from the time the contract is concluded.

### Section 472

(1) In the event the purchaser has not accepted the merchandise, such condition is delaying in nature and is considered to have expired if the purchaser does not inform the seller during the approval period that he is approving the merchandise.

(2) If the purchaser has accepted the merchandise, such condition has the character of release and the purchaser is considered to have approved the merchandise if he does not reject the merchandise in writing during the approval period.

(3) The purchaser does not have the right to reject the merchandise if he cannot return the merchandise in the same condition in which he accepted it.

## Article 2. Price Supplement

### Section 473

If the parties agree that price should be additionally adjusted to reflect the production costs and if they do not decide which items of the production costs are determinant, the purchase price is changed at a rate of price changes in the principal raw materials necessary to produce the merchandise being sold.

### Section 474

(1) If the parties do not specify a contract deadline for deciding the price changes, prices prevailing at the time of contract are used together with prices in effect at the time the seller is expected to deliver the merchandise. If the merchandise is to be delivered within a certain time limit, the decisive time is the time of actual performance on contract; otherwise, the decisive time is the end of that time limit.

(2) If the seller is late in the delivery of goods and if at the time of actual delivery prices of decisive components of production are lower than the prices were at the time stipulated in Paragraph 1 above, these lower prices will be used.

### Section 475

The rights and responsibilities of the parties based on the supplement become extinct if the claimant does not exercise rights against the other party without delay after delivery of the goods.

## Subchapter III. Contracts To Sell a Business

### Section 476. Basic Provisions

(1) By concluding a contract to sell a business, the seller obligates himself to transfer ownership to the purchaser with the rights, and other assets used in the course of business and the purchaser obligates himself to take on the seller's business liabilities and obligates himself to pay the purchase price.

(2) This contract must be in written form.

### Section 477

(1) All assets and liabilities related to the sale pass to the purchaser.

(2) The accounts receivable are transferred under provisions for assigning accounts receivable available.

(3) The assignment of liabilities does not require approval by the creditor, but the seller guarantees the purchasers that all liabilities will be paid.

(4) The purchaser is required to notify creditors of the assignment of liabilities without delay and the seller is obligated to notify debtors of the transfer of accounts receivable to the purchaser.

### Section 478

(1) If the sale of business results in undoubtedly worse opportunities for the creditor to collect on the accounts receivable, the creditor may petition the court within 60 days of the day he learned of the sale of the business but, at the latest, within six months of the day the sale was recorded in the Business Register (Section 488, Paragraph 1) that the assignment of seller's liability to the purchaser be declared null and void.

(2) If the seller is not recorded in the Business Register, an appeal can be filed with the court within 60 days of the day a creditor learned about the sale of the business but, at the latest, within six months of the day the contract was concluded.

(3) If a creditor successfully exercises his rights according to Paragraphs 1 or 2 above, the seller is obligated to meet his liability toward the creditor within the time specified for settlement and is entitled to require the purchaser to make settlement with all relevant appurtenances.

### Section 479

(1) The purchaser assumes all rights to industrial assets and good will of the business being sold. If the specific performance is required in order to acquire or maintain these rights, the activities of the purchaser upon the sale of the business, as well as operation of the business prior to its sale, are considered.

(2) However, no transfer ownership take place, in accordance with Paragraph 1, if it would conflict with the terms of contract on the exercise of rights based on industrial assets or some other type of goodwill or based in the nature of these rights.

### Section 480

All rights and liabilities arising from the business employment contracts pass from the seller to the purchaser.

### Section 481

(1) Unless the contract specifies otherwise, the purchaser acquires the trade name of the business he is purchasing, unless this conflicts with the law or with the rights of a third party. This transfer is not impeded by a change in the designation of the legal form of a person authorized to engage in business activities.

(2) In the event the sale of business take place among private individuals, the purchaser may use the trade name of the seller, provided the contract so specifies, but only with the supplemental information indicating his succession in the business.

#### Section 482

It is assumed that the purchase price is based on accounting information including tangible and intangible assets, rights, and liabilities of the business on the date of sale and any other assets including in the contract if they have not been part of accounting records. If the contract is to take effect at a later date, the purchase price may be adjusted upward or downward, depending on current developments.

#### Section 483

(1) Effective on the day the contract becomes effective, the seller is required to provide, and the purchaser is obligated to accept, assets included in the sale. The assumption is by written statement of inventory signed by both parties.

(2) In assuming ownership, the danger of damage to assets passes from the seller to the purchaser.

(3) Ownership of assets being sold passes from the seller to the purchaser as a result of the terms of the contract. The ownership rights to real estate are passed by the act of registration according to special regulations. Provisions of Sections 444 through 446 apply.

#### Section 484

At the latest at the time of the inventory compiled in accordance with Section 483, Paragraph 1, above, the seller is required to identify for the purchaser defects in all tangible and intangible assets or rights of which he is cognizant or should be cognizant; otherwise, he is responsible for any damage which would have been preventable as a result of such identification of assets.

#### Section 485

The inventory of assets, compiled in accordance with Section 483, Paragraph 1, above, shall identify any missing items or defective items. Missing items are considered to be items which the seller has not transferred to the purchaser although, according to the accounting records and to the contract, these items are a part and parcel of the assets being sold. In judging the defects, the serviceability of such items in the operation of the business is taken into consideration together with their depreciated value, according to the accounting records.

#### Section 486

(1) The purchaser is entitled to an appropriate reduction of the purchase price, for any missing or defective items. In the event the missing items or the discernible defects of items were not identified in the inventory according to Section 483, Paragraph 1, the right to a price reduction cannot be granted as the result of a court proceeding unless the seller knew about these factors at the time the items were transferred. With respect to defects which do not become discernible until the business is operated, these

consequences ensue if these defects were not reported by the purchaser to the seller without delay after he determined that they exist or after he could have determined that they exist through the exercise of diligent care but, at the latest, after the expiration of six months from the day the contract became effective (Section 482). The provisions of Section 428, Paragraph 2, and Section 439 apply.

(2) The purchaser is entitled to withdraw from the contract if the enterprise is not suitable to operate as specified in the contract and the defects which are noted on a timely basis are such that they cannot be eliminated or if the seller does not eliminate them during an appropriately extended time limit, made available to him by the purchaser. The provisions of Section 441 apply.

(3) The purchaser may claim entitlement to a reduced purchase price due to liabilities not identified or not included in the accounting records at the time the contract was effective (Section 482), unless the purchaser knew of these factors at the time the contract was being concluded.

(4) Legal defects of the business being sold are subject to provisions of Sections 433 through 435. If the ownership of real estate which is part of the business not pass to the purchaser and the seller does not eliminate this defect within a reasonable amount of additional time set for him by the purchaser, the purchaser may withdraw from the contract.

(5) Rights in accordance with the previous paragraphs do not impact on entitlements to compensation for damages. Provisions of Section 444 apply.

#### Section 487

The provisions of Sections 477 through 486 apply equally to contracts involving the sale of an independent part of the business.

#### Section 488

(1) If an enterprise is sold by an individual who is recorded in the Business Register, that individual shall propose that an inventory be compiled covering the sale of the business or its part and that it be recorded in that register.

(2) A legal entity which has sold a business which comprised its worth may complete its liquidation proceedings and be erased from the Business Register only after the expiration of one year following the sale, unless a court proceeding in accordance with Section 478 has been initiated during that period or at a later date, if the claims which were successfully made or satisfied during this proceeding.

### Subchapter IV. Lease-Purchase Contracts

#### Section 489. Basic Provisions

(1) By contracting for a lease-purchase, the parties agree, in completing a lease agreement, that the lessee is entitled to purchase the leased item or items during after the expiration of the contract period.

(2) A lease purchase contract must be in written form.

**Section 490**

If, under the terms of contract, a lessee is entitled to purchase the leased items during the contract period, the lease agreement is terminated upon a delivery of a written notification that the renter is exercising this right under the terms of the lease-purchase contract, even if the contract has been concluded for a specific duration.

**Section 491**

If, under the terms of the lease purchase contract, the lessee is authorized to make a purchase after termination of the contract, this right expires if the claimant does not inform the first party in writing of the intention to purchase the leased item without delay following the expiration of the lease agreement.

**Section 492**

If the claimant notifies the first party in writing, under the terms of the lease-purchase contract that he intends to purchase the leased item, a purchase agreement comes into being with regard to this item upon the delivery of this notification. The claimant acquired a standing as a purchaser and the first that of a seller.

**Section 493**

(1) A lease-purchase agreement (Section 492), transfers the ownership of a tangible asset to the purchaser. Ownership to real estate is transferred as the result of the act of registration under special regulations.

(2) The purchaser assumes the risk of damage to item or items involved under the terms of the lease-purchase agreement. (Section 492).

**Section 494**

(1) If the agreement does not specify the final purchase price or the method of its determination for the right to purchase a leased item, the purchaser is required to pay the purchase price in accordance with Section 448, Paragraph 2. The determination of the purchase price is not influenced by any damage to or major wear and tear of the item, for which the lessee is responsible.

(2) The purchaser is required to pay the purchase price promptly upon the signing of the lease-purchase contract.

**Section 495**

(1) In judging item defects, the characteristics which a leased item should have are decisive.

(2) The deadline for notification on defects in purchased items begins to run from the day the lessee accepted the item or items.

(3) In the event leased item ownership does not pass to the purchaser and the seller does not eliminate this defect within a reasonable additional time provided by the purchaser, the purchaser may withdraw from the contract.

**Section 496**

(1) The contract may specify that, upon expiration of the lease-purchase contract the lessee may acquire ownership

to the leased item without additional cost, provided he chooses to exercise this right with the lessor.

(2) The person acquiring ownership according to Paragraph 1 above is not entitled to claim any defects in the leased item, with the exception of legal defects, unless a guarantee of quality has been made.

**Subchapter V. Line-of-Credit Agreements****Section 497. Basic Provisions**

(1) In a line-of-credit contract, a creditor promises that, at the request of the debtor, he will make a given amount of cash available to the debtor and the debtor promises to repay the offered cash and to pay interest.

**Section 498**

The parties may identify the line of credit as being for specific currency, other than Czechoslovak, as long as this is not in conflict with foreign exchange regulations. Unless the parties agree otherwise, the debtor is required to return the cash in the currency in which they were made available to him and to pay interest in the same currency.

**Section 499**

A creditor may be entitled to a fee for arranging a line of credit, if arranging credit is his business.

**Section 500**

(1) A debtor may demand cash against his line of credit within the time limit stipulated in the contract. If time limit has not been established, the debtor may make his claims on cash until one of the parties withdraws from contract.

(2) If the contract does not provide otherwise, the debtor may close his line of credit effective immediately and the creditor may do so by the end of the calendar month following the month in which the cancellation was delivered to the debtor.

**Section 501**

(1) A creditor is required to make cash available to a debtor within the time limits provided or, if no limits have been negotiated, without delay if, under the terms of contract, the debtor requested him to do so.

(2) If the contract specifies that the credit may be used only for special purpose, the creditor may restrict providing cash only for meeting obligations of the debtor to that purpose only.

**Section 502**

(1) From the time the cash is provided, the debtor is required to pay interest an agreed-upon rate or at the highest permissible rate established by law or on the basis of law. If interest payments are not established, the debtor is obligated to pay customary interest charges required for credits granted by banks at debtor's residence at the time the contract has been concluded. If the parties agree on interest rates higher than those authorized by law or on the basis of law, the debtor is only required to pay interest at the highest authorized rate.

(2) In case of a doubt, it is assumed that the agreed-upon interest rate is quoted for an annual term.

#### Section 503

(1) The interest due is repayable together with the borrowed cash amount. If the deadline for cash payback is longer than one year, interest is payable at the end of each calendar year. At the time when final payment is due, any unpaid interest also becomes due and payable.

(2) If installments are to be paid on the loan, current interest is payable with each due payment.

(3) The debtor may prepay the loan before the time period stated in the contract. Interest on the principal need be paid only for the period during which the loan was being used.

#### Section 504

The debtor is required to repay the loan within an agreed-upon time limit; otherwise, within one month of the day the creditor has requested the payment.

#### Section 505

If, during the existence of the contract, the security used to back the liability deteriorates or expires, the debtor is required to restore it to status quo antes. If the debtor does not do so within a reasonable period of time, the creditor may withdraw from the contract and the full amount of debt and interest becomes due and payable.

#### Section 506

If the debtor is in arrears on more than two installments or one installment for more than three months, the creditor is authorized to withdraw from the contract and to call the loan with interest.

#### Section 507

If the cash was loaned to the debtor only for a specific purpose and the debtor uses it for another purpose or if the use of money for the agreed-upon purpose is not possible, the creditor may withdraw from the contract and call the balance of the loan plus interest as due and payable immediately.

### Article VI. Industrial Ownership Licensing Agreements

#### Section 508. Basic Provisions

(1) By executing a licensing agreement for industrial ownership, the grantor authorizes the grantee to exercise these ownership rights (hereinafter only "rights") to the extent and territory agreed-upon and the grantee promises to make certain payments or provide other material values.

(2) This contract is to be executed in written form.

#### Section 509

(1) If required by special regulations, the exercise of the above rights will be recorded in the appropriate register.

(2) In the event the existence of the right is dependent upon its being exercised, the grantee is required to do so.

#### Section 510

During the life of contract, the grantor will maintain the ownership as required by the nature of this right.

#### Section 511

(1) The grantor is further authorized to exercise the contracted right and to grant others the authority to exercise it.

(2) The grantee is not authorized to transfer the exercise of the right to other parties.

#### Section 512

Following the signing of a contract, the grantor will make available to the grantee all documents and information necessary for the exercise of the right under the terms of contract.

#### Section 513

The grantee is required to keep the documents and information, which have been made available to him, confidential with respect to third parties unless the contract or the nature of the documents and information indicate that the grantor is not interested in their being kept confidential. Participants in the business pledged to confidentiality are not considered to be third parties. Upon termination of the contract, the grantee is required to return all documents which have been made available and to maintain confidentiality of the information until such time that it becomes generally known.

#### Section 514

(1) In the event the grantee is restricted in the exercise of his rights by other persons or if he should determine that other persons are violating this right, he is required to inform the grantor as soon as possible.

(2) The grantor is required to take immediately all legal steps necessary to protect the exercise of the right involved by the grantee. The grantee is required to provide all necessary cooperation to the grantor in this matter.

#### Section 515

Unless the contract is for an indefinite period, it may be terminated. If the contract does not specify another cancellation deadline, the cancellation becomes effective one year from the end of the calendar month in which the cancellation was delivered to the other party.

### Article VII. Contract Entrusted Items

#### Section 516. Basic Provisions

(1) In a contract to entrust certain items, the custodian promises that he will temporarily, and free of charge, take care of a depositor's item which he has in his possession in context of a business arrangement.

(2) If the contract does not specify whether the item is to be taken care of for a fee or free of charge and taking care of the item is not the object of the custodian's business activities, the parties will have concluded an agreement to entrust certain items.

**Section 517**

The custodian is required to exercise diligent care of item(s) deposited and, in consideration of its character and his own ability, in preventing damages. In the event custody the item requires special measures, the custodian is required to take such measures if they part of the contract or if the depositor has informed him prior to signing the contract. The custodian is obligated to have the items insured against damage only if specified in the contract.

**Section 518**

Even if the custodian has contracted to care for an item by a certain method, this method may be changed if circumstances, which the custodian could not have predicted at the time the contract was concluded and which make the fulfillment of his liability disproportionately difficult for him. The custodian is required to notify the depositor promptly of development of such circumstances.

**Section 519**

(1) In the event the custodian entrusts an item to a third party, without the approval of the depositor, he has the same responsibility as though he was taking care of the item himself. In the event he does so with the approval of the depositor, he is responsible as an agent.

(2) If the custodian entrusts the care of an item to a third party in conflict with the contract, the custodian assumes the risk of damage to the item. Provisions of Section 518 are not effected by this development.

**Section 520**

The custodian may not, without the approval of the depositor, make use of the item involved or make it possible for a third party to make use of the item.

**Section 521**

(1) The depositor is required to compensate the custodian for any damage caused by the entrusted if the custodian was unable to avert this damage by the exercise of due care as outlined in Section 517. The depositor is further required to compensate the custodian for any expenses necessarily or purposefully expended in the fulfillment of the custodial duties.

(2) In the case of extraordinary expenses which could not be predicted at the time the contract, the custodian is required to obtain the approval of the depositor before making such expenditures, if possible. If the depositor does not inform the custodian of his disapproval without delay, it is considered that he agrees with the expenses involved.

(3) If the custodian incurs the expenses noted in Paragraph 2 above without first asking for the approval by the depositor and if the latter does not subsequently express his approval of the expenditures, the custodian may ask for compensation the extent to which the depositor received a benefit as a result such expenses.

(4) Expenses for which the custodian is entitled to compensation are to be paid by depositor promptly after he has

received a request to that effect from the custodian, but no later than the entrusted item is returned.

**Section 522**

The custodian is required to return the entrusted item at the place where it had been deposited; otherwise, at the headquarters or place of business, at his residence or at another location which is an organizational component of the custodian's business.

**Section 523**

(1) Even if the period for which the item is to be deposited has been agreed upon, the custodian is obligated to return the item without delay when requested to do so by the depositor.

(2) The custodian may require the depositor to accept the deposited item without delay even prior to expiration of the contracted deadline if the continued compliance with terms of contract would cause the custodian disproportionate difficulties which he could not have predicted at the time of contract or if a third party is claiming the deposited item.

**Section 524**

If the time for holding the items has not been agreed upon and is not evident from the circumstances under which the contract was concluded, the custodian is obligated to return such item to the depositor when depositor so requests and the depositor is required to accept the item without delay when asked to do so by the custodian.

**Section 525**

In the event the depositor accept the item on a timely basis, the custodian may give him a reasonable time limit to him to do so. After the vain expiration of this time limit, the custodian may withdraw from the contract and, provided he so notifies the depositor of an extended deadline, he is entitled to sell the item at the depositor's expense by a most suitable method or store it with a third party at the expense of the depositor.

**Section 526**

Provisions of Sections 517 through 525 apply in determination of rights and responsibilities of the parties even in cases which, under the provisions of this law, concern other types of contracts than those concerned with entrusting of items, one party is required to care for an item owned by a second party without being entitled to a fee, unless another adjustment is applicable under these provisions.

**Subchapter VIII. Warehousing Contracts****Section 527. Basic Provisions**

(1) Through execution of warehousing contract, a storage provider promises to accept goods for storage and care and the depositor promises to pay him a compensation (storage fee).

(2) If the contract does not specify that an item is to be tended in return for a fee or free of charge and the tending

for items is the business storage provider, it is considered that the parties have concluded a warehousing agreement.

### Section 528

(1) The warehouse supervisor is obligated to accept the item at the time it is presented the depositor and to verify receipt of merchandise in writing.

(2) The confirmation that an item has been taken over for storage may have the character of a security that carries the right to demand the stored item (warehouse manifest).

(3) The warehouse manifest can be made out to a bearer or to a specific name. If the warehouse manifest is made out to a bearer, the warehouse supervisor is required to issue the merchandise to the individual submitting the warehouse manifest. If it is made out to a specific name, he is required to return the merchandise to the individual listed on the warehouse manifest. A warehouse manifest bearing a specific name can be transferred by the authorized party to another party by an endorsement, provided the warehouse manifest does not preclude such transfer. The endorsement is subject to regulations governing bills of exchange.

(4) An individual who, on the basis of a warehouse manifest, is authorized receive an item has the standing of a depositor and, upon the request of the warehouse supervisor, to sign a receipt on the warehouse manifest.

### Section 529

If the contract does not specify otherwise, it is terminated if the depositor does not provide the item to the warehouse supervisor for storage within the time stipulated in the contract, otherwise within six months after the contract is signed.

### Section 530

The warehouse supervisor is required to store separately all warehoused items and fully identify it as an item belonging to the depositor. The depositor has the right to inspect the stored item and to take samples from it.

### Section 531

(1) The depositor pays a storage fee beginning on the day the item is accepted for storage, the amount and method of payment being agreed upon in the contract.

(2) In the event a storage fee is not agreed upon in the contract, the depositor is required to pay the customary storage fee applicable at the time the contract is being drawn, taking into account the type of the item being stored, the duration, and the method of storage.

(3) If the storage period exceeds six months, the storage fee is paid semiannually for every six-month period of storage completed. Storage fees for incomplete six-month periods and storage fees for a shorter duration are paid at the time the stored item is reclaimed. The warehouse custodian is entitled to a storage fee even upon termination of the contract for the period the stored item was warehoused, if the depositor has not reclaimed it in sufficient time.

(4) The storage fee covers all expenditures connected with warehousing, but does not include insurance; the warehouse custodian is entitled to recover those costs if the contract requires him to have the item insured.

### Section 532

(1) If storage is agreed upon for a specific period of time, the depositor may reclaim the item prior to the expiration of that time, but must first pay the storage fee due for the entire contract period. Prior to the expiration of the agreed-upon time, the depositor may again request that an item be accepted for purposes of additional storage until the full period runs out and is then obligated to compensate the warehouse custodian for expenses incurred as a result of this request.

(2) If the time for which the contract is being concluded is not specified, it is considered that it is being concluded for an indefinite period of time. The depositor may demand that the item be returned at any time and is obligated to pay a storage fee for the period during which the item was in storage. The contract expires with the devolution of the stored item.

(3) The warehouse custodian has the right to cancel the contract by a 30-day termination notice. The termination notice begins to run with the first day of the month following the month in which the cancellation notice was delivered to the depositor.

### Section 533

(1) The warehouse custodian is responsible for damages to stored items if such damage occurred after he obtained custody of the item and this responsibility runs until the item is reclaimed, unless he was unable to avert this damage in spite of due care exercised by him.

(2) The warehouse custodian is not responsible for damages to an item if that damage was caused by:

- a) the depositor or owner of the item;
- b) a natural defect in the deposited item; or

c) defective packaging of which the depositor was informed at the time the item left in care of the warehouse supervisor and if this notification was duly noted in the document confirming receipt of the item; if the warehouse custodian did not point out the defective packaging, he is not responsible for damage to the item involved only if this packaging defect was not discernible.

(3) In the event of damage occurring in a manner indicated in Paragraph 2 above, the warehouse custodian is required to provide due care to minimize any damage.

### Section 534

(1) The warehouse custodian may withdraw from the contract under the following conditions:

- a) if the depositor concealed the dangerous character of the item and if the warehouse custodian is in danger of considerable damage as a result;

- b) if the depositor owes a storage fee for a period of at least three months;
- c) if there is a danger of substantial damage to a stored item which the warehouse custodian is unable to avert; or
- d) if the depositor does not reclaim the item after expiration of the time the warehouse custodian is obligated to store the item.

(2) After withdrawing from the contract, the warehouse custodian can specify an appropriate time limit for the depositor to receive the item, accompanied by a notification that he will otherwise sell the merchandise. Upon the vain expiration of this time limit, the warehouse custodian may sell the stored merchandise by a suitable method at the expense of the depositor. He may subtract from the proceeds of the sale, which he is required to pass to the depositor without delay, the storage fee and other expenses related to the sale.

### Section 535

To secure his claims based on the storage contract, the warehouse custodian enjoys a legal right of bailment pertaining to stored items as long as they are in his possession. This legal right of bailment takes precedence over other bailment rights.

## Subchapter IX. Performance Contracts

### Article 1. Basic Provisions

#### Section 536

- (1) Through a performance contract, a manufacturer promises to perform and a customer promises to pay.
- (2) Performance is understood as the completion of a certain good and, to the extent it is not part of a purchase contract, the assembly of the good, its maintenance, the performance of agreed-upon repairs, or modifications of the good or tangible record of other activities. A performance is always understood to be the formation, assembly, maintenance, repair, or modification of a structure or its part.
- (3) The price must be agreed upon in the contract or the contract must specify the method for determining it, unless the parties to the contract express their intention of concluding a contract even without such determination.

### Article 2. Performance

#### Section 537

- (1) A producer is required to perform on at his expense and at his own risk within the agreed-upon time or within a reasonable time, taking into consideration the nature of the performance. Unless the contract or the nature of the performance indicate otherwise, the producer may perform prior to the agreed-upon time.
- (2) The customer is required to accept the performance.
- (3) In performing, a producer proceeds independently and is not bound by customer instructions in determining the best method of performance unless he specifically obligated himself to comply with such instructions.

#### Section 538

The producer may entrust the performance to another party, unless the contract or the nature of the performance indicate otherwise. When another person is performing, the producer is responsible for it as though he performed himself.

### Article 3. Goods Necessary for Performance

#### Section 539

(1) Items which the customer is supposed to provide the producer for purposes of performance under the terms of contract must be released to the producer at the time specified in the contract or without delay after the signing of the contract. In cases of doubt, it is assumed that the price of performance will not be reduced by the price of these items.

(2) If the customer does not provide these items on a timely basis, the producer can allow him a reasonable amount of time to do so and, following the vain expiration of this time, may provide such items himself and charge them the cost to the customer, after first informing the customer of this fact. The customer is required to compensate the producer for the cost of these items and for special expenses related to them without delay after being requested to do so by the producer.

(3) Items which are necessary to the performance and which, according to the contract, the customer is not required to provide, must be provided by the producer.

#### Section 540

- (1) The customer assumes the risk of damage to any items he has provided for the performance and remains as their owner until such time as they become part of the finished good.
- (2) The producer is responsible for items received from the customer for storage and processing, repair, or modification, in place of the storage custodian.
- (3) After performance or expiration of the liability to perform, the producer is required to return to the customer any items he received from him before which were not used up in the performance.

#### Section 541

With regard to items which the producer has provided for purposes of performance, he has the same standing as a seller, unless otherwise provided by the terms of contract. In cases of doubt, it is considered that the purchase price of these items is included in the price of performance.

### Segment 4. Ownership Rights and Dangers of Damage to Produced Goods

#### Section 542

- (1) If a producer is working at the customer's site, on his land, or on land which the customer has provided, the customer assumes the risk of damage to the item being made and, unless the contract specifies otherwise, he is the owner.

(2) In cases not subject to the provisions of Paragraph 1 above, the producer assumes the risk of damage to the item being made and retains ownership. For purposes of determining when the risk of danger of damage to the item being made passes from the producer to the customer, use is made of the provisions covering the transfer of the risk of damage to merchandise from the seller to the purchaser.

(3) The producer does not assume the risk of damage to the item, the object of which is maintenance, repair, or modification, nor does he assume ownership rights with respect to such items.

#### Section 543

(1) If the producer has ownership rights to the item being made and the contract to do the work expires for reasons for which the customer is not responsible, the customer may ask for reimbursement of the price for the items accepted by the producer and used up in carrying out the work or which it is impossible to return. This has no effect on the customer's entitlement to compensation for damages.

(2) If the performance contract expires for reasons for which the customer is responsible, the customer is entitled to ask compensation equal to the amount of the producer's gain.

#### Section 544

(1) If the customer has ownership rights with respect to an item being made and it is impossible to return the item in view of its characteristics or to transfer it to the producer, the customer is required to compensate the producer for an amount equal to the customer's gain as a result of the item being made, provided the customer is not responsible for the occurrence.

(2) If the contract expired, as outlined in Paragraph 1, for reasons for which the customer is responsible, the producer may ask compensation of the price of the items which he particularly provided and which have become part of the item being made as a result of processing, provided the price of these items is not incorporated in the producer's claim in accordance with Section 548, Paragraph 2.

#### Section 545

The provisions of Section 544 are also applicable in cases where the objective of the performance is assembly work, maintenance, or modification of items.

### Segment 5. Price for Performance

#### Section 546

(1) The customer is required to pay the producer the price agreed upon in the contract or determined by the method stipulated in the contract. If the price is not agreed upon in this manner or cannot be determined and the contract is nevertheless valid (Section 536, Paragraph 2), the customer is obligated to pay the price which is customarily paid for comparable products at the time the contract is concluded under similar commercial conditions.

(2) Agreements pertaining to a deposit on the price of the product do not have any effect on the consequences outlined in Sections 548 and 549.

#### Section 547. Budgeted Prices

(1) The fact that the price was determined on the basis of a budget which is part and parcel of the contract or was communicated by the producer to the customer before the contract was concluded has no effect on the amount of the price.

(2) However, if the price was determined on the basis of a budget, regarding which it is clear from the contract that its completion is not guaranteed, the producer may strive to achieve a reasonable increase in the price if he discovers, as a result of performing the work, certain activities were not included in the budget, provided these activities were unpredictable at the time the contract was signed.

(3) If the price was determined on the basis of a budget which, according to contract, is not considered to be binding, the producer may insist that his remuneration be increased by an amount which is unavoidably greater than the expenses of the producer and that these costs be included in the budget.

(4) In the event the customer disagrees with the price increase, the price increase is set by a court at the producer's request.

(5) A customer may unconditionally withdraw from a contract in the event the producer asks a price increase according to Paragraphs 2 and 3 and that such price increase exceeds 10 percent of the price determined on the basis of the budget. In such a case, the customer is required to compensate the producer for that part of the price commensurate to the partial work completion in under the budget.

(6) The producer's entitlement to have a price increase determined in accordance with Paragraphs 2 and 4 expires if he does not explain the necessity for exceeding the budgetary sum and the amount of the price increase demanded without unnecessary delay after it has been shown that exceeding the price that was determined on the basis of a budget becomes inevitable.

#### Section 548

(1) The customer is to pay the producer his price within the time period agreed upon in the contract. Unless the contract or this law specifies otherwise, the entitlement to pay the price occurs upon the completion of the work.

(2) If the producer withdraws from the contract because the customer is in default and if there is no obstacle to customer's meeting his responsibilities under circumstances which might exclude such responsibility (Section 374), the producer is to receive the price to which he entitled under the terms of contract. However, this price is to be reduced by the amount the producer saved by not completing the work.

**Section 549**

(1) If, after signing a contract, the parties agree to restrict the extent of the work and do not agree how this restriction will affect the price, the customer is obligated to pay only a proportionally reduced price; if the parties agree by this method to expand the work, the customer is required to pay a corresponding higher price.

(2) If the parties agree, after signing a contract, to change the work and do not come to agreement how this change will affect the price, the customer is obligated to pay a price which is higher or lower, based on the difference in the scope of necessary activities and necessary expenses related to such changes.

**Article 6. Method of Performance****Section 550**

The customer is entitled to inspect the work being done. If the customer determines the producer is not complying with the requirements, the customer is entitled to demand that the producer correct the effects of defective workmanship and to do the job in a proper manner. In the event the producer does not comply, even after reasonable extra time has been allowed, and if the procedures used by the producer would undoubtedly lead to a substantial violation of the terms of contract (Section 345, Paragraph 2), the customer is entitled to withdraw from the contract.

**Section 551**

(1) The producer is required to inform the customer without delay, of problems with items received from the customer or the unsatisfactory instructions provided by the customer for completion of the work, if the producer should have been able to determine this unsuitability by due care. In the event the unsuitability of items or instructions are an obstacle to the proper execution of the work, the fabricator is obligated to halt the process to the extent necessary until such time as the items are exchanged or the instructions provided by the customer are changed or until he receives a written communication indicating that the customer insists on the execution of the work and on the use of the items and on the basis of the instructions provided. The time limit for completing the work is extended by the amount of time that it was necessary to halt the execution of the work. The producer is also entitled to compensation for any costs related to halting the work process or caused by using unsuitable items until such times as it was possible to ascertain that these items were unsuitable.

(2) A producer who has complied with provisions of Paragraph 1 above is not responsible for inability to complete the work or for defects occurring in the completed work caused by unsuitable items or instructions if the customer insisted in writing on their being used in the execution of the work. In the case of uncompleted work, the producer is entitled to collect a price which is lowered by an amount he saved by not fully completing the work.

(3) A producer who has not complied with provisions of Paragraph 1 above is responsible for defects in the work

caused by using unsuitable items given to him by the customer or as a result of instructions provided to him by the customer.

**Section 552**

(1) If the producer finds unexpected obstacles in performing his work which are related to items scheduled to be repaired or modified or the location where the work is to be accomplished and these obstacles make the accomplishment of the work impossible by the agreed-upon method, the producer is required to notify the customer without delay and to propose a change in the work. Until an agreement is reached regarding a change order, the producer is entitled to halt the work process. If the parties do not agree to a change in the contract within a reasonable time, either party may withdraw from the contract.

(2) If the producer has not violated his responsibility to detect the presence of any defects under Paragraph 1 above prior to initiating the work, neither of the parties has the right to compensation for damages; the producer is entitled to collect the price for that portion of the work which has been completed before he became unable to continue due to obstacles uncovered by due care.

**Section 553**

(1) If the contract specifies that the customer is entitled to inspect the individual stages of work, the producer is required to invite the customer on a timely basis to carry out such a check.

(2) If the producer fails to meet his responsibility under the provisions of Paragraph 1 above, he must enable the customer to conduct a supplemental check and bear the costs of it.

(3) If the customer fails to make the inspection he has been invited to conduct or which was supposed to be done under agreed-to time schedule, the producer may continue with the work. However, if the customer was not able to carry out the inspection as a result of an obstacle which he was unable to avert, he may ask for an immediate supplemental check; however, he is then required to compensate the producer for any expenses caused by the delay.

**Segment 7. Delivery on Performance****Section 554**

(1) A producer meets his responsibility for performance through its proper delivery to the customer at the agreed-upon location; otherwise, at the location stipulated by this law. If the location of transfer is another location than that indicated in Paragraphs 2 and 4 below, the producer shall call on the customer to receive the goods.

(2) If a location is not agreed upon and the contract requires the producer to deliver on his performance, delivery of the product is accomplished at the time it is received by first shipper who is to deliver to its destination. The producer shall make it possible for the customer to exercise the rights based on a shipping contract, provided the customer does not already have such rights on the basis of contract.

(3) In the event the contract does not specify the location at which the product is to be delivered or if it does not require the producer to dispatch the product, the delivery is done at the location specified in contract or, if the contract does not identify this location, the delivery is accomplished at a location at which the customer knew or should have known at the time the contract was being concluded, the work would be performed.

(4) In cases where Paragraphs 1 through 3 above do not apply, the delivery is accomplished at the producer's address or place of business, at his domicile, or at the location of his organizational component, provided the location is communicated to the customer in sufficient time.

(5) The delivery of a completed product transfers ownership rights to the customer, if the producer held those rights up to that time, and the customer assumes the risk to the completed product, if the producer carried that risk up to that time. The provisions of Sections 444 through 446, Sections 455 through 459, and Section 461 apply.

(6) If either side so requests, a receipt is signed by both parties.

### Section 555

(1) If the contract does not require the producer to send the product, the producer meets his responsibility to deliver on performance if he enables the customer to dispose of the finished product at a location specified in Section 554. If the producer's responsibility includes the requirement to assemble an item made, repaired, or modified by him, this responsibility is discharged by the proper completion of such assembly.

(2) If the contract specifies that the proper performance is to be verified by agreed-upon tests, the performance not considered to have been completed until such tests have been successfully performed. The producer is required to invite the customer, on a timely basis, to participate in these tests.

(3) Failure on the part of a customer to participate in tests to which he has been invited on a timely basis does not prevent these tests from being made. Provisions of Section 553, Paragraph 3, governing the repetition of tests apply.

(4) Test results are recorded in a statement signed by both parties. If the customer is not present, the statement is signed for him by a trusted and impartial party participating in the tests.

### Section 556

If the performance involves activity other than production, assembly, maintenance, repair, or modification of an item, the producer is required to proceed within the framework specified by the contract, exercising due care to achieve the material results of the performance specified in the contract. The producer is required to deliver the work to the customer.

### Section 557

The producer is entitled to make the results of his performance under provisions of Section 556 available to parties other than the customer unless prohibited by the terms of contract. If the contract does not contain a prohibition clause of such action, the producer may take advantage of it, provided that, in view of the nature of the work, this is not in conflict with the interests of the customer.

### Section 558

If the work performance under provisions of Section 556 is the result of activity which is protected by license based on industrial or intellectual property, the customer is entitled to make use of it only for purposes specified in the contract. For any other purposes, the customer may do so only with the approval of the producer.

### Section 559

The producer is responsible for violations of industrial or intellectual property rights of other parties resulting from his performance whether this occurs under the Czechoslovak Legal Code or the Legal Code of the state where the goods are to be utilized and if the producer knew this to be the case at the time of contract. Legal defects of the work are subject to appropriate provisions of Sections 434 and 435.

## Article 8. Performance Defects

### Section 560

(1) The work is deemed to be defective if its completion does not correspond to the terms of contract.

(2) The producer is responsible for any defects in the workmanship at the time it is being delivered (Section 554); however, if the threat of damage to the produced goods passes to the customer later, the time of this transfer is the key. The producer is responsible for defects to work subject to quality guarantee to the full extent of such a guarantee.

(3) The producer is responsible for defects occurring after the time listed in Paragraph 2 above, if such defects were caused by violations of his responsibility.

(4) If the work involves the production of goods, provisions of Sections 420 through 422 and Section 426 apply.

### Section 561

The producer is not responsible for defects if they were caused by using customer supplied components or if, in spite of exercise of due care, he was unable to determine that these items were unsuitable or notified the customer of the problem and the customer insisted on their being used. Similarly, the producer is not responsible for defects caused by following incorrect instructions provided by the customer, provided the producer informed him of the unsuitability of these instructions and the customer insisted that they be used or if the producer was unable to determine such unsuitability.

**Section 562**

(1) The customer is obligated to inspect the goods or to arrange for their inspection as soon as possible after the work has been delivered.

(2) The court shall not grant the customer any relief based on defective work if the customer does not make it known that the work is defective:

- a) upon discovering the defects;
- b) after he should have ascertained that defects were present exercising a due care examination under provisions of Paragraph 1;
- c) when such defects could have been ascertained later by using a due care inspection but, at the latest, within two years in construction work and within five years following the delivery of the work. For defects covered by guarantees, the period of guarantee is used instead of the above time limits.

(3) The provisions of Section 428, Paragraphs 2 and 3, apply to outcomes under Paragraph 2 above.

**Section 563**

(1) The guarantee period begins to run when the work is delivered.

(2) Quality guarantees under the provisions of Sections 429 through 431 apply.

**Section 564**

Defects are subject to provisions of Sections 436 through 441. However, the customer is not entitled to demand a replacement if it is not possible to return or deliver the work to the producer because of its nature.

**Section 565**

If, under provisions of Section 564, the producer exercises his right to withdraw from the contract dealing with goods which cannot be returned or delivered to the producer, the provisions of Section 441 do not apply. However, the customer is not entitled to withdraw from the contract if he has not notified the producer of defective work in sufficient time.

**Article X. Agency Contract****Section 566**

(1) In agency contract, an agent promises that, for a fee, he will represent a client in certain business matter or matters by carrying out the necessary legal steps in the name of the client or by undertaking another activity and the client promises to pay a fee for such activity.

(2) If such matters concern normal business activities of the agent, it is assumed that the fee has been agreed upon.

**Section 567**

(1) In a business representation, an agent is required to act with due care.

(2) The activities which an agent promises to undertake must be accomplished in accordance with instructions and

in the interest of the client, of which the agent is familiar or should be familiar. The agent is required to inform the client of all circumstances he ascertains as a result of arranging the business affairs which could have influence upon a change in client instructions.

(3) An agent may deviate from the instructions given by a client only if this becomes urgently essential in the interest of the client and the agent cannot obtain the client's approval in sufficient time. Not even in such cases, however, may the agent deviate from client instructions if this is prohibited by the contract or by the client.

**Section 568**

(1) An agent is required to carry out the business negotiations personally only if the contract so specifies. If he violates this duty, he shall be responsible for damages caused to the client.

(2) The client is required to deliver any items and information necessary for the business negotiations in sufficient time, unless their nature indicates that they are to be provided by the agent.

(3) In the event the business negotiations requires legal actions in the name of the client, the client is required to provide the agent with a written power of attorney in sufficient time.

(4) If the power of attorney is not included in the contract, the contract itself does not entitle the agent to act in the name of the client, even in cases where the individual with whom the agent is negotiating is aware of this obligation.

**Section 569**

The agent is obligated to return to client any items which he received from the client on during business negotiations without delay.

**Section 570**

The agent is responsible for damages to items he received from the client for purposes of business negotiations, as well as for damage to items received for the purposes of negotiations from third parties, unless he would not have been able to avert this damage through exercise of due care. The agent is required to insure such items in sufficient time only if the contract so specifies or if requested to do so by the client and he does so at the expense of the client.

**Section 571**

(1) If the amount of the fee is not stipulated in the contract, the client is required to pay the agent a going fee for activities similar to those undertaken by the agent in the business negotiations.

(2) Unless otherwise indicated in the contract, the agent is entitled to a fee if he regularly executes the activity which he was obligated to carry out, regardless of whether such activity resulted in the expected outcome or not. If it can be anticipated that, in the course of business negotiations, the agent will incur considerable expenses, the agent may demand a retainer fee at the time of contract signing.

### Section 572

The client is required to compensate the agent for expenses incurred by the agent in the meting his duties, unless the nature of such expenses indicates that they have already been included in the fee.

### Section 573

The agent is not responsible for violating his duty by a third party with whom he has concluded the contract in the course of business negotiations unless he specifically assumed responsibility for the performance of other parties in the course of the business negotiations.

### Section 574

- (1) The client may partially or wholly terminate the contract at any time.
- (2) If the termination notice does not specify a later effective date, it becomes effective on the day the agent found out or could have found out about it.
- (3) On the date the termination notice become effective, the agent is required to discontinue activities referred to in the cancellation notice. However, he is required to inform the client of measures necessary to prevent any damages which are an immediate threat to the client as a result of the discontinuation of the business negotiations.
- (4) In return for properly carried out activities until the time the termination notice is effective, the agent is entitled to compensation for any expenses made in accordance with Section 572 and to a prorationed fee.

### Section 575

- (1) The agent can cancel the contract effective at the end of the calendar month following the month in which the termination notice was delivered to the client, unless the termination notice specifies a later date.
- (2) Effective on the day of termination, the agent's duty to carry out business negotiations expires. If this termination might result in damages for the client, the agent is required to inform the client of measures necessary to avert such damage. If the client cannot take such measures even with the assistance of other individuals and requests the agent to take such measures on his behalf, the agent is obligated to do so.
- (3) The duty of an agent is terminated by his death if he is a private individual or as a result of termination of a legal entity if that is his status.
- (4) The agent is entitled for a compensation of expenses under provisions of Section 572 and a prorationed fee for the results of business negotiations accomplished according to Paragraph 2 between the day the termination notice is delivered and its effective date.

### Section 576

Provisions of Sections 567 through 575 apply in cases where there is a duty under other provisions of this law to

carry out certain business negotiations at the expense of another, unless these other provisions indicate something different.

## Article XI. Consignment Contracts

### Section 577. Basic Provisions

By concluding a consignment contract, the consignor promises to carry out certain business transaction in his own name for a consignee at the latter's expense, and the consignee promises to pay the consignor a fee.

### Section 578

- (1) In arranging a business transaction, the consignor is required to act with all due care according to the instructions of the consignee.
- (2) The consignor may deviate from the instructions of the consignee only if this is in the interest of the consignee and if he cannot obtain the consignee's timely approval. If this duty is violated, the consignee need not consider the action as having been accomplished at his expense if he has refused to accept the transaction as complete without delay after he has become aware of the terms of transaction.

### Section 579

- (1) The consignor is required to protect those interests of the consignee which are known to him as being related to business transaction at hand and to notify the consignee of all circumstances which could exert an influence upon a change in the consignee's instructions. The consignor is required to provide insurance only if the contract so specifies or if he has received appropriate instructions from the consignee and is authorized to do so at the expense of the consignee.

- (2) A consignor is required to report to the consignee on the business transactions as specified in the contract; otherwise, at the request of the consignee.

### Section 580

- (1) Unless otherwise specified in contract, the consignor is required to use other individuals to complete the terms of the contract in the event he is unable to do so himself.
- (2) If the consignor uses other individuals to complete the transaction, he has the same responsibility as if he were handling the matter himself.

### Section 581

The consignee does not accrue either rights or responsibilities with respect to third parties as a result of the consignor's actions. However, the consignee may directly require a third party to return any items or to complete the transaction passed to them by the consignor if the latter cannot do so due to circumstances which have to do with his person.

### Section 582

The consignee may demand that the consignor complete the transaction undertaken by a third party even if that party failed in its duties but only insofar as the consignor had assumed those duties in writing or if he has violated

the instructions of the consignee related to the party with whom the contract was to be concluded at the expense of the consignee. In such a case, appropriate provisions covering guarantees apply.

### Section 583

- (1) The consignee retains ownership of chattel items entrusted to the consignor for sale, until such time that ownership is assumed by a third party. Ownership rights to chattel items acquired for the consignee by the consignor accrue to the consignee upon delivery.
- (2) The consignor is responsible for damage to items listed in Paragraph 1, in accordance with provisions covering storage contracts.

### Section 584

(1) After arranging the business transactions at hand, the consignor is required to report the results to the consignee and account for the costs.

(2) In this report, the consignor indicates the person with whom he concluded the contract. If he does not do so, the consignee is authorized to enter a claim against the consignor, requiring the latter to complete the transactions resulting from this contract.

### Section 585

The consignor is required to transfer to the consignee any rights acquired as a result of arranging a business transaction and to deliver any gains and the consignee is required to accept these transactions.

### Section 586

If the individual with whom the consignor has concluded a contract in a business transaction violates his duties, the consignor is required, at consignee's expense, to demand that he meet his duties or, in the event the consignee agrees, pass on the accounts receivable related to the transaction to the consignee.

### Section 587

(1) If a fee has not been negotiated, the consignor is entitled to a fee commensurate with the accomplished transactions and the achieved result, taking into account customary fees paid for similar transactions at the time the contract is concluded.

(2) The consignor is entitled to receive a fee as soon as he completes the transaction required under the provisions of Sections 584 through 586.

### Section 588

Together with the fee, the consignee is required to compensate the consignor for expenses which the consignor had to incur in carrying out the transaction. In cases of doubt, it is considered that the fee also includes the compensation for these expenses.

### Section 589

Consignments are also subject to provisions of Sections 574 and 575.

## Section 590

If the terms of contract involve a continuing activity by the consignor, the relationship between the consignee and the consignor is also subject to the provisions regulating contracts for business representation.

### Subchapter XII. Investigation Contracts

#### Section 591. Basic Provisions

By concluding an investigation contract, the investigator promises to conduct an impartial determination of the status pertaining to a certain matters, to determine results of certain activities, or to issue a report on the investigation, and the customer who commissioned such investigation promises to pay him a fee.

### Section 592

- (1) The investigator is required to conduct his investigation in an impartial manner and to describe the ascertained status in the investigation report.
- (2) Any contract provisions vesting the investigator with responsibilities which could affect his impartiality in the investigation or the results of his investigations report are null and void.

### Section 593

The investigator is required to conduct the investigation with due care, taking into account the established methods of investigation as to time, location, and scope, as well as the conditions of the subject of investigation at the time the investigation is conducted.

### Section 594

- (1) The investigator is required to conduct the investigation procedures to the extent and by methods stipulated in the contract; otherwise, to the extent and by methods generally used for similar investigations.
- (2) Unless otherwise stated in the contract, the investigation is to take place without delay at the contract specified location. If the location is not listed in the contract, the customer is required to give the time and place where the investigation is to be accomplished to the investigator on a timely basis.

### Section 595

- (1) The investigator is entitled to a fee for meeting the requirement of conducting an investigation and submitting a report on its results.
- (2) If the fee has not been agreed upon, the customer ordering it is required to pay a fee which is customary at the time the contract is concluded for the type, the scope, method, and location of the investigation.
- (3) In addition to the fee, the customer ordering the investigation may be required to compensate the investigator for necessary and reasonable expenses incurred in the course of investigation, as long as the nature of such expenses has already been included as part of the fee.

### Section 596

The customer is required to cooperate with the investigator as necessary and, specifically, provide that individual with the necessary access to the subject of investigation.

### Section 597

The conduct of a investigation does not impact on the legal relationship between the customer and other parties, especially not individuals at whom it is aimed or those who were instrumental in identifying the subject of the investigation.

### Section 598

If the individual conducting the investigation did not carry it according to expectations, he is not entitled to any claims outlined in Section 595 and the customer who ordered the investigation may, after passage of the time stipulated for carrying out the investigation, withdraw from the contract.

### Section 599

The investigator is required to make good on any damages caused by the violation of his duties in the conduct of investigation only insofar as this damage cannot be claimed by the customer who ordered the investigation against the individual responsible for the faulty performance which is the subject of the investigation procedure. However, the customer may not demand that he be compensated for damages for that which he provide notice on a timely basis or to seek damages against the individual responsible for the defective performance of the objective of the investigation or compensation for something the customer may not be able to claim on the basis of a contract concluded with such a person, where contract may exclude filing of such claim after the investigation has been completed.

### Section 600

In the event the investigator is required, in accordance with Section 599 above, to pay compensation for damages, the act of payment of these damages results in his assumption of any claims the customer has against the individual responsible for the faulty performance of the subject of investigation, much the same as if these claims had been ceded to him.

## Article XIII. Forwarding Contract

### Section 601. Basic Provisions

- (1) By signing a forwarding contract, the forwarding agent promises the customer that he will ship his goods from one specific location to another at the principal's name and expense, and the principal promises to pay the forwarder a fee.
- (2) The forwarding agent may require a written order of shipment (a shipping order), if the contract is not in written form.

### Section 602

(1) Within the terms of contract, the forwarding agent is required to follow the instructions provided by the customer. The forwarding agent is required to inform the principal of an apparent error in instructions. If the forwarding agent does not receive the necessary instructions from the principal, he is required to ask him for them. However, if there is a risk of delay, the forwarder is required to proceed without instructions so as to provide maximum protection to the customer's interests which are known to the forwarding agent.

(2) If the contract specifies that prior to releasing the shipment or the documents facilitating disposition of the shipment, the forwarding agent shall collect a sum of money from the recipient of the shipment or shall accomplish some other act of collection, the provisions for a bank documentary collection (Section 697 and subsequent sections) apply.

### Section 603

(1) In carrying out his duties, the forwarding agent is required to exercise due care in deciding on a method and on conditions of shipment which best suit the interests of the customer based on the contract and the customer's instructions or which are otherwise known to the forwarding agent.

(2) The forwarding agent is responsible for damage to an accepted shipment if it occurs during shipment, unless he was unable to avert it, despite the exercise of due care.

(3) The forwarding agent is required to insure the shipment only if the contract so specifies.

### Section 604

The principal is required to provide the forwarding agent with correct instructions regarding the content of the shipment and its nature, as well as other facts necessary to carry out the shipping contract and is responsible for any damage suffered by the forwarding agent as a result of a violation of this responsibility.

### Section 605

- (1) The forwarding agent may himself complete a shipment for which he is responsible, unless this conflicts with the contract or is prohibited by the consignor, not later than the time the shipping procedure is initiated.
- (2) If the forwarding agent makes use of another forwarding agent to complete the shipment (intermediate forwarder), he retains the same responsibility as if he were handling the shipment himself.

### Section 606

- (1) The forwarding agent is required to report to the consignor any threat or occurrence of damage to the shipment as soon as he finds out about it; otherwise, he is responsible for damage suffered by the consignor as a result of the forwarding agent's failure to meet his duty.

(2) If there is an immediate danger of substantial damage to the shipment, and if there is no time to request instructions from the consignor, or if the consignor delays giving such instructions to the forwarding agent, the forwarding agent may sell a shipment by a suitable method for the account of the consignor.

### Section 607

(1) The forwarding agent is entitled to an agreed-upon fee or, if no such fee has been agreed upon, a customary fee for similar transaction at the time the contract is signed. In addition, the forwarding agent is entitled to compensation of necessary and helpful expenses incurred in carrying out his duties. Moreover, the forwarding agent is entitled to expenses incurred for the customer's benefit.

(2) The consignor is required to pay the forwarding agent an appropriate deposit against the costs related to forwarder's shipping duties before the latter carries them out.

(3) The consignor is required to pay the forwarding agent his fee and any expenses without delay after the forwarding agent has completed his transportation service by concluding the necessary contracts with shippers or intermediate forwarding agents and reported on this fact to the consignor.

### Section 608

To secure his claims against the consignor, the forwarding agent may use the shipment as a pledge as long as the shipment is in his possession or in the possession of someone who has it in his name, or as long as the forwarding agent has shipping documents which entitle him to dispose of the shipment.

### Section 609

Forwarding contracts are supported by provisions covering commission contracts.

## Subchapter XIV. Shipping Contracts

### Section 610. Basic Provisions

By signing a shipping contract, the shipper promises the consignor that he will ship an item (a shipment) from a certain location (the location of consignment) to a certain other location (destination) and the consignor promises to pay him a fee (shipping charges).

### Section 611

(1) The shipper is entitled to demand that the consignor confirm having ordered the shipment noted in the shipping document and the consignor is entitled to demand that the shipper provide written confirmation of the fact that he has accepted the shipment.

(2) If special documentation is required in order to accomplish the shipment, the consignor is required to deliver it to the shipper no later than the time the goods are ready for shipping. The consignor is responsible for damage caused to the shipper by a failure to release these documents or for the documents being incorrect.

(3) If the contract does not specify otherwise, the contract expires if the consignor has not requested the shipper to accept the shipment within a time stipulated in the contract; otherwise, within six months from the time the contract was concluded.

### Section 612

(1) According to the terms of the contract, the shipper may be required to give the consignor a bill of lading at the time he accepts the goods for shipping.

(2) The bill of lading documents the right to demand a release of shipment of goods enumerated therein. The shipper is required to release the shipment to an authorized party in accordance with the bill of lading, provided that party presents him with the bill of lading and confirms the acceptance of the shipment.

### Section 613

(1) The bill of lading can be made out to a bearer, to the name of a specific individual, or to that person's account.

(2) Rights based in a bill of lading made out to a bearer are transferred as a result of the act of releasing the bill of lading to the party entitled to receive such rights. Rights based on the bill of lading made out in a specific name can be transferred to another party according to the provisions governing the transfer of accounts payable. Rights based on a bill of lading made out to the account of an authorized person can be transferred as a result of a complete or incomplete endorsement. If the bill of lading does not specify to whose order it is made out, it is considered to have been made out to the order of the consignor.

### Section 614

(1) The shipper is required to list the following data in the bill of lading:

a) name and location of the legal entity or the name and business address or residence of the private individual acting as the shipper;

b) name and location of the legal entity or the name and place of business or residence of the private individual acting as the consignor;

c) designation of the item being shipped;

d) information as to whether the bill of lading was made out to a bearer or in the name of the recipient or information indicating that it was made out to that individual's order;

e) place of delivery;

f) location and date of issuance of the bill of lading and the signature of the shipper.

(2) In the event the bill of lading was executed in several copies, the number of copies is to be listed on each of them. After the shipment has been released to the authorized person on the basis of one of the copies, the remaining copies are invalidated.

### Section 615

In the event of the destruction or loss of the bill of lading (Section 612), the shipper is required to issue the consignor a new bill of lading, containing the indication that it is a replacement bill of lading. In the event the original bill of lading is misused, the consignor is required to compensate the shipper for any resulting damages.

### Section 616

The content of the bill of lading is decisive when it comes to claims by the authorized parties made in under the bill of lading. The shipper can object to such claims by referring to the terms of contract with the consignor only to the extent such provisions are contained in the bill of lading or to the extent to which such provisions are expressly referred to in the bill of lading. The shipper may only exercise those objections against a party authorized by the bill of lading or based on the relation between the shipper and the authorized party. Provisions of Section 627 are not affected by this.

### Section 617

- (1) The shipper is required to move the goods to its destination exercising due care and within the agreed-upon time limit; otherwise, without delay. In cases of doubt, the time limit begins to run on the day following the day on which the shipper accepted the shipment.
- (2) If the recipient of the goods is known to the shipper, he is required to deliver the shipment to him or if, according to the contract, the recipient is to call for the shipment at the destination, the shipper is required to notify him that the transfer of the shipment has been completed.

### Section 618

(1) Until the shipper has released the shipment to the recipient, the consignor is entitled to demand that the transfer of the shipment be interrupted and that the shipment be returned to him or that some other disposition be made of the shipment and he shall pay compensation for any expenditures connected therewith. However, if a bill of lading has been issued, the consignor may so demand only on the bill of lading. If the bill of lading has already been released to the person authorized to demand release of the shipment, such instructions may be issued only by that individual. If several copies of the bill of lading have been executed, the presentation of all copies is required.

(2) If the contract specifies a prior release of the shipment, the shipper shall collect a payment from the recipient or takes an action to collect, the provisions on bank collection against a documentary evidence (Section 697 and subsequent sections).

### Section 619

If the contract identifies the recipient of a shipment, that individual acquires the rights based on the contract at the time he requests release of the shipment to him after its arrival at its destination or upon the expiration of the time it was supposed to arrive. The entitlements to damage

claims due to shipping also transfer to the recipient. However, the shipper shall not release the shipment to him if it would conflict with the instructions given to him by the consignor, in accordance with Section 618. In such a case, the consignor continues to exercise the right of disposition over the shipment. If the consignor identifies another person as the recipient of the shipment, that person assumes the rights in the agreement in the same way as the original recipient.

### Section 620

(1) If a bill of lading has been issued, the individual authorized to receive the goods has the right to have shipment released to him upon presentation of the bill of lading. Such a person is:

- a) the person identified as the recipient in accordance with the bill of lading made out to a specific name;
- b) according to the bill of lading made to order of, the person to whom the bill of lading has been made out, unless it has been endorsed, in which case it is the person who is listed as the last in an uninterrupted series of endorsements, or the bearer of a bill of lading on which the final endorsement has been made;
- c) the individual who presents the bill of lading to the shipper if a bill of lading is made out to a bearer.

(2) In the event a bill of lading has been endorsed, the shipper is released from his liability if he releases the shipment in good faith to a person who has acquired the bill of lading on the basis of an endorsement without regard to the fact whether any entitlements based in the contract have also been transferred to that party. Endorsements are subject to the provisions on bills of exchange.

### Section 621

The shipper may discharge his duty with help of another shipper but retains responsibility as if he were handling the shipment himself.

### Section 622

(1) A shipper is responsible for damages to the shipment after he accepts it and until such time as it is delivered to the recipient unless the shipper could not avoid such damage, despite the exercise of due care.

(2) However, the shipper is not responsible for damages to the shipment if he can prove that it was caused by one of the following:

- a) by the consignor, the recipient, or by the owner of the shipment;
- b) by a defect or the natural condition of the contents of the shipment, including any normal shrinkage; or
- c) as a result of defective packaging of which the consignor was notified by the shipper at the time he received the shipment for transit and, in the event a bill of lading or a freight bill was issued, if the defect to the packaging was noted therein; if the shipper fails to note the defect in

packaging, he is not responsible for damage to the shipment resulting from this defect unless it was discernible at the time the shipment was accepted for transit.

(3) In case of damage to shipments under Paragraph 2 above, the shipper is required to exercise due care to minimize the damage.

(4) Any provisions in the contract which would limit the responsibility of the shipper as outlined in Paragraphs 1 through 3 above are void.

### Section 623

(1) The shipper is required to report to the consignor expeditiously of any damage to the shipment prior to its delivery to the recipient. However, if the recipient has acquired the right to have the shipment released to him, the shipper is required to report this fact to the recipient. The shipper is responsible for damage suffered by the consignor or recipient as a result of violating these duties.

(2) If there is an imminent substantial danger to the shipment and if there is no time to request instructions from the consignor or if the consignor delays giving such instructions, the shipper may sell the shipment by a suitable method for the account of the consignor.

### Section 624

(1) In the event the shipment is lost or destroyed, the shipper is required to pay the price of the shipped goods at the time it was released to the shipper.

(2) In the event of damage to or loss of value of the shipment, the shipper is required to pay the difference between the value of the shipment at the time he accepted it for shipment and the value which the damaged or deteriorated shipment had at the time.

### Section 625

(1) The shipper is entitled to an agreed-upon fee; in the event it was not agreed upon, he is entitled to a fee customary at the time the contract was signed, considering the shipper's obligation.

(2) The shipper is entitled to a shipping fee at the time of delivery of the shipment to its destination, unless the contract specifies another definite time.

(3) In the event the shipper cannot complete the shipment of the goods for causes for which he is not responsible, he is entitled to collect a proportion of the shipping fee, considering shipment already accomplished.

### Section 626

The consignor is required to provide the shipper with correct information on the content of the shipment and its nature and is responsible for any damage suffered by the shipper as a result of the violation of this duty.

### Section 627

By accepting the shipment, the duty for compensations to the shipper passes to the consignor based on the contract concerning shipment of the accepted goods, if the recipient knew or should have known of these costs.

### Section 628

(1) To secure his claims based in the contract, the shipper has a holding right to the shipment, as long as it is at his disposal.

(2) In the event the shipment has more than one hold, the shipper has the right of first claim over other holds placed earlier and over the forwarders.

### Section 629

Implementing regulations may provide for different ways of handling shipments by rail, aircraft, highway, inland waterway, and maritime insofar as the origination of contracts, shipping documents, the exclusion of items from shipment, the acceptance of shipments by shippers and their release to recipients, as well as the scope of claims against shippers and satisfying them is concerned; however, these provisions may not limit the duty of the shipper to pay for damages to the shipment, as specified in Sections 622 and 624.

## Article XV. Lease Contract for Means of Transportation

### Section 630. Basic Provisions

(1) By concluding a contract to lease a means of transportation, the lessor promises to lease a transport vehicle to the lessee for temporary use and the lessee promises to pay a fee (rental).

(2) This contract must be in written form.

### Section 631

(1) The lessor is required to release to the lessee the vehicle together with the necessary documents specified in the contract; otherwise, without delay upon signing the contract. The transportation must be operational and suited for the purposes specified in the contract; otherwise, it must be suitable for purposes for which such vehicles are normally used.

(2) The lessor is responsible for damage resulting to the lessee because the transportation medium was not suitable in accordance with Paragraph 1 above. The lessor is relieved of this responsibility if he can prove that he was unable to ascertain or predict the unsuitability of the vehicle for the lessee, inspite of exercise of due care.

### Section 632

(1) The lessee is authorized to use the vehicle for the purposes indicated in Section 631, Paragraph 1.

(2) Unless otherwise specified by the contract, the lessee must not permit another person to use the vehicle in question.

(3) The lessee is required to take care that the vehicle does not suffer any damage. The responsibility for damage to the vehicle is assumed by the lessor unless it was caused by the lessee or by persons to whom the lessee gave access to the vehicle. The lessee is responsible for insuring the vehicle if required by the contract.

(4) The right of the lessor to compensation for damages to the vehicle expires if the lessor fails to make the claim against the lessee within six months following the return of the vehicle.

### Section 633

(1) The lessee is required to maintain the vehicle at the expense of the lessor in the same state in which he received it, taking into account normal wear and tear.

(2) The lessee is required to report any repairs which he is required to report without delay to the lessor in accordance with Paragraph 1 above. If he fails in his duty, he loses the right to be compensated for any expenses, but he can demand the amount by which the lessor has become enriched as a result of the repairs.

(3) The entitlement to collect expenses according to Paragraph 1 above must be claimed by the lessee from the lessor within three months of the time they were incurred; in the event he does not do so, the right cannot be granted by a court proceeding if the lessor rightfully objects that the right was not exercised on time.

### Section 634

(1) The lessee is required to pay an agreed-upon rental fee, otherwise, he is required to pay a rental fee which is customary at the time the contract was signed, taking into account the nature of the leased vehicle and the stipulated method of using it.

(2) If the contract does not specify otherwise, the lessee is required to pay rental at the conclusion of his use of the vehicle; however, if a rental agreement has been concluded for a period longer than three months, he shall do so at the end of each calendar month in which the vehicle was being used.

### Section 635

(1) The lessee is not required to pay rental for the period during which he was unable to use the vehicle as a result of its unsuitability or because it needed to be repaired, unless the inability to use the vehicle was brought about by the lessee or by persons to whom the lessee gave access to the vehicle.

(2) If the lessee does not notify the lessor without delay that he is unable to use the vehicle, his liability to pay a rental fee continues.

### Section 636

(1) The right to use a vehicle expires at the time established by contract or with the destruction of the vehicle.

(2) A contract for leasing a vehicle for an indefinite period of time, may be terminated by giving a notice.

(3) The notice becomes effective at the expiration of 30 days, unless the contract on leasing a vehicle specifies a different period or unless the notice indicates a later period. The contract may specify that it can be terminated as early as upon the delivery of the notice.

### Section 637

Upon the expiration of the right to use a vehicle, the lessee is required to return the vehicle to the location at which he obtained it, unless the contract indicates otherwise.

## Article XVI. Contract To Operate a Vehicle

### Section 638. Basic Provisions

(1) By signing a contract to operate a vehicle, the operator promises to transport cargo identified by the client contracting the operation of a vehicle and to use the vehicle to undertake either one or more previously agreed-upon trips for purposes of transporting said cargo or to take trips during the agreed-upon period at the discretion of the client and the client promises to pay a fee.

(2) This contract must be in written form.

### Section 639

(1) The operator is required to ensure that the vehicle is suitable for trips specified by contract and can be used for contracted transportation. The responsibilities of the operator are similar to those listed in Section 631.

(2) The operator is required to provide a fitting crew for the vehicle, provide the necessary fuel as well as other items necessary for the contracted trip.

### Section 640

The client may cede to another person the right to demand the agreed-upon operation of the vehicle in question.

### Section 641

If the contract specifies that the cargo is to be transported by a ship operator, the rights and responsibilities of the parties correspond to provisions governing transportation contracts, to the extent the nature of the contract on or operation of means of transportation so permits.

## Article XVII. Brokerage Contract

### Section 642. Basic Provisions

By signing a brokerage contract, the broker promises to initiate actions aimed at providing the interested party (client) with the opportunity of concluding a specific contract with a third party and the client promises to pay the broker a fee (commission).

### Section 643

The broker is required to notify the client promptly of circumstances which are important to the client in making decisions regarding the contract being brokered and the client is required to notify the broker of any facts which have a bearing on signing of such agreement.

### Section 644

The broker is entitled to a commission if the contract which was the objective of his brokering activities is concluded.

**Section 645**

If the contract indicates that the broker is required only to provide the client with an opportunity to conclude a contract with a third party, said contract having a specific content, the broker becomes eligible for a commission as soon as he provides the client with that opportunity.

**Section 646**

If, under the terms of contract, the broker meet the requirements for commission until after the third party has agreed to the contract being brokered, the broker also becomes eligible for such a commission in the event the obligation assumed by the third party with respect to the client has become extinct or when the third party delays fulfilling that liability for reasons for which the client is responsible. If the basis for determining the commission is the extent of the fulfilled obligation assumed by a third party, this basis shall also include any failure to perform on such liabilities for reasons for which the client is responsible.

**Section 647**

(1) The broker is entitled to an agreed-upon commission; otherwise, to a commission which is customary for brokering similar contracts at the time the contract on brokerage has been signed. However, the broker is not entitled to a commission in the event a contract involving a third party was concluded without his collaboration or in the event the broker was also acting on behalf of the individual with whom the contract being brokered was concluded, in conflict with the terms of the brokerage contract.

(2) The broker is entitled to collect expenses connected with his brokering activities, in addition to the commission, only if that was expressly agreed upon and, in cases of doubt, only if he is entitled to a commission.

**Section 648**

The broker is required to keep documents which he has acquired in line of his brokerage activities for the use of his client and must do so as long as these documents may have a bearing on protecting the interests of the client.

**Section 649**

(1) The broker is not responsible for the third party compliance with terms which he has arranged; however, he may not propose that a client conclude agreements with an individual about whom he knows or should have known that there is well-founded doubt whether that individual will properly and on a timely basis meet his obligations under the terms of contract being brokered.

(2) If the client so requests, the broker is required to communicate to him any data necessary for judging the credibility of the individual with whom the broker is proposing that a contract be concluded.

**Section 650**

A brokerage contract is terminated if the contract, which is the objective of the brokerage activities, is not concluded

within the time limit specified in the contract on brokerage. If this time is not specified, either party can terminate the contract by notifying the other side.

**Section 651**

The broker acquires the right to a commission even if a contract is concluded with a third party after the original brokerage contract is terminated (Section 644), or after the contract which was the subject of his brokerage activities (Section 646) has been fulfilled.

**Article XVIII. Business Agency Contract****Section 652. Basic Provisions**

(1) By signing a business agency contract, the business agent promises to initiate actions on behalf of his client aimed at concluding a certain type of contract (hereinafter referred to as "business transaction") and the client promises to pay the business agent a fee (commission).

(2) This contract must be in written form.

**Section 653**

The business representative is required to use due care in developing the activity to which he obligated himself within a stipulated territory. If the territory is not specified in the contract, it is assumed that the agent will engage in such activities on the territory of the Czech and Slovak Federal Republic.

**Section 654**

(1) The objective of the agent's obligation is to seek out parties interested in the type of business transactions outline in the contract.

(2) If the contract specifies legal actions on behalf of the client, the related rights and responsibilities are subject to provisions governing proxy contracts.

(3) Without a power of attorney, the business representative is not authorized to conclude business transactions on behalf of a client, to accept anything on his behalf, or take any other legal actions.

**Section 655**

(1) The business representative is required to carry out activities to which he obligated himself with due care, to protect client's interests with which he is familiar and, within the terms of contract, follow his client's instructions.

(2) The agent informs his client of market developments and circumstances important to the interests of the client, particularly those important to the client's decision making with respect to concluding the business transaction.

(3) If the contract also requires the agent to participate in concluding the business transaction on behalf of his client, he is required to carry out such transactions under the terms specified by the client, unless the client agreed to another procedure.

(4) If the representative cannot carry out the activities, he must inform his client without delay.

#### Section 656

The agent is required to participate, within the terms of his obligation, in completing the business transaction in accordance with instructions by his client and in the interest of the client, both of which factors are or should be known to the him, particularly for purposes of resolving any irregularities which may arise as a result of the business transactions.

#### Section 657

The business representative may not pass on any data received from his client in performance of his duty without the approval of the client or use such data for himself or on behalf of another party, if it might conflict with the interests of his client. This duty persists even after termination of the agency contract.

#### Section 658

(1) The representative is required to recommend terms of business or to conclude business transactions only with individuals who can be expected to meet their obligations.

(2) The representative can be held responsible for third party whom he recommended for business dealings to his client or with whom he has arranged a business contract on his client's behalf only if he agreed to do so in writing. In such a case, his rights and responsibilities are those established by the contract with the client.

#### Section 659

(1) The agent is entitled to an agreed upon commission; otherwise, he is entitled to a commission which is customary for similar business transactions. (2) In addition to his commission, the representative is entitled to compensation for expenses related to his activities only if that was agreed to and provided nothing else is stipulated in the contract and only if his entitlement to a commission is based on a business transaction to which these expenses are related.

(3) The entitlement to a commission and to an agreed-upon amount for expenses does not come into being in cases where the agent was acting as a business representative or broker for a person with whom the client has concluded a business contract.

#### Section 660

(1) The agent is entitled to a commission if a business transaction has taken place and if the third party has complied with the terms of contract. If the third party has only complied only partially, the representative is only entitled to a commission for the part which was carried out. However, if the third party is not expected to comply with the terms of contract until the six months following the business transaction, the business representative is entitled to his commission upon signing of the contract.

(2) The agent is also entitled to a commission if the responsibility assumed by a third party with respect to his

client is terminated or the fulfillment of the duty has been delayed for reasons for which the client is responsible.

(3) If the basis for determining the commission is the extent to which a third party has met its obligations, this basis must also include provisions for any failure to perform for which the client is responsible.

#### Section 661

If the terms of contract show that the representative is only required to arrange for his client to conclude a business transaction with a third party, said business transaction having a certain content, the agent is entitled to a commission as soon as he arranges this opportunity for his client.

#### Section 662

Unless otherwise provided by this law, the representative is not entitled to a commission for a business transactions which took place without his help.

#### Section 663

(1) The client is required to provide the agent with all documents and assistance necessary to carry out his duties.

(2) The essential documents and materials provided under Paragraph 1 above, remain the property of the client and the representative is required to return them upon completion of the contract if, in view of their nature, they were not used up.

(3) The business representative is required to keep documents acquired because of his activities on behalf of his client as long as these documents are useful in protecting the interests of the client.

#### Nonexclusive Business Agency

#### Section 664

Unless the contract states otherwise, the client may delegate other parties to represent him in matters agreed upon with the agent and the business representative may also engage in the kind of activity he has promised to undertake for the client on behalf of another person or he may undertake business transactions on his own account or on behalf of a third party.

#### Exclusive Business Agency

#### Section 665

In the event exclusive representation has been negotiated, the client is not authorized to use another agent within the specified territory and specific type of business and the business representative is not authorized act as agent for another party in the same line nor to conclude business transactions on his own account or on behalf of a third party.

#### Section 666

A client is entitled to conclude business transactions subject to the exclusive business agency even without the agent, however, unless specified otherwise by the contract, he is required to pay a commission to the agent as if the latter had acted on his behalf.

**Termination of Business Agency****Section 667**

The responsibility assumed by the business representative terminates with the passage of time for which the contract was concluded. However, if, after the passage of this time, the parties continue to abide by the terms of the contract, it is assumed that the contract has been extended by the initially agreed-upon period of time, but not more than six months. If, after expiration of this time, the parties continue to abide by the terms of the contract, it is assumed that the validity of the contract continues to be extended in six-month increments.

**Section 668**

(1) A contract is negotiated for an indefinite period if it is so specified or does not contain any provisions identifying the duration for which it was concluded.

(2) A contract negotiated for an indefinite period of time can be terminated by either side by giving notice.

(3) If the content of the termination notice does not indicate a later time, the contract is terminated in the case of notice being given during the first year of the contract, by the end of the calendar month following the month during which notice is given; if the contract runs longer than one year, the contract is terminated at the end of the calendar quarter following the time the notice is given.

**Section 669**

If the client has terminated the contract after the passage of one year from the time it was concluded, he is required to pay the agent for any customers he has gained for him. As long as the contract does not specify otherwise, this commission will be 10 percent of the value of business transactions the agent carried out during the past 12 months, for every completed year the contract was in force.

**Section 670**

In the event an exclusive agency agreement was negotiated for a specific period, either side may terminate the contract as specified in Section 668, Paragraph 3, above if the volume of business during the past 12 months failed to measure up to the volume of business specified in the contract; otherwise, if it was not proportional to sales opportunities. The representative is entitled to the commission under Section 669 even if the contract is canceled by the client in accordance with this provision.

**Section 671**

The business representative is entitled to a commission even if a business transaction has been concluded or if a third party carried out the duties after the termination of the contract agreed to by the agent under provisions of Sections 668 or 670 above if the client used the services of agent to conclude a contract which came into being during the life of the contract.

**Section 672**

(1) If, in negotiating an exclusive business agency, the client makes use of another agent, the business representative is entitled to withdraw from the contract.

(2) If, after negotiating an exclusive business agency, the agent engages in activities which are the subject to contract with the first client on behalf of third parties, the client may withdraw from the contract.

**Article XIX. Silent Partnership****Section 673. Basic Provisions**

(1) A silent partnership contract binds the silent partner to make a specified investment and share in the business activities and the general partner promises to pay the silent partner a part of the profits from the business activities commensurate with the silent partner's participating share.

(2) This contract must be in written form.

**Section 674**

(1) The investment may be a specific sum of money, a specific item, a right, or another property value which may be used in the course of business.

(2) The silent partner is required to provide the investment to the general partner or to make possible its utilization in the course of doing business within an agreed-upon time, or without delay following the signing of the contract.

(3) If the contract does not specify otherwise, the general partner becomes the owner of such investment, with the exception of real estate. If the investment consists of real estate, the general partner is entitled to use it for the period for which the contract is in force. If the investment is a right and if the contract does not specify otherwise, the general partner is authorized to exercise that right while the contract is in force.

**Section 675**

A silent partner is authorized to review the business records pertinent to the business in which he is participating and is authorized to demand a copy of the annual financial statement.

**Section 676**

(1) The annual financial statement is key in determining the share to which a silent partner is entitled.

(2) A silent partner acquires a right to a share in the profits within 30 days of the compilation of the annual financial statement. If the business is a legal entity, the time limit runs from the time the financial statement is approved under the bylaws of that legal entity, under the partnership agreement or according to the law.

(3) In the event of losses, the partner is not required to return the earned share of profits.

**Section 677**

(1) A business loss reduces the silent partner's share. The reduced investment is augmented by the silent partner's

share in the profits in subsequent years and the silent partner becomes again entitled to a share of profits after the size of his original investment has been restored.

(2) The silent partner is not required to add investment when sharing in business losses and participates in such losses only to the extent of his investment.

#### Section 678

(1) Rights and responsibilities toward third parties in the business activities rest in the general partner.

(2) A silent partner, however, assumes the obligations of the general partner if:

- a) his name is part of the business trade name; or
- b) he has informed the party with whom the general partner is negotiating a contract, that they both operate the business jointly.

#### Section 679

(1) The participation of the silent partner in a business is terminated:

- a) as a result of the passage of time for which this participation was agreed upon;
- b) as a result of a notice given when the contract was for indefinite period;
- c) in the event the silent partner's share in the losses becomes equal to his investment;
- d) by termination of the business undertaking to which the contract refers;
- e) as a result of bankruptcy filing involving the property of the general partner or as a result of the rejection of the request to file for bankruptcy protection for lack of capital.

(2) If the contract does not specify another cancellation deadline, the contract may be canceled at the latest six months prior to the end of the calendar year.

#### Section 680

Within 30 days of the termination of the contract, the general partner is required to return to the silent partner the investment which has been increased or decreased by his share in profits.

#### Section 681

If the provisions in Sections 673 through 680 do not indicate otherwise, the silent partner has the legal standing, with respect to his investment, which is equivalent to that of a creditor with regard to his claim, but is not entitled to demand the return of his investment prior to the expiration of the contract.

### Subchapter XX. Letter of Credit

#### Basic Provisions

##### Section 682

(1) By signing an agreement to open a letter of credit, the bank promises the client that, on the basis of his request, it

will offer to a certain party (claimant) certain commitments at the customer's expense, provided the claimant meets the required conditions within a specified time and the customer promises to pay the bank a fee.

(2) This contract must be in written form.

#### Section 683

(1) Under the agreement, the bank notifies the claimant in writing that it is opening a letter of credit on his behalf and informs him of the terms of the letter. The credit terms must specify the bank commitment, the time limit, and the credit conditions which the claimant must meet during this period of time in order to make a claim against the bank.

(2) The bank shall accomplish the notification according to Paragraph 1 above without delay after concluding the agreement, unless the agreement indicates that it should not do so until the customer gives new instructions.

(3) The bank liability toward the claimant becomes established with the notification under Paragraph 1.

(4) The opening of a letter of credit results in a liability on the part of a customer to the bank.

(5) The credit terms may contain language which makes it the duty of the bank to pay a certain amount or to accept a certain bill of exchange.

#### Section 684

In the event the fee for a letter of credit is not agreed upon, the client is required to pay the bank a fee which is customary at the time the agreement was made.

#### Bank-Claimant Relations

##### Section 685

The liability assumed by the bank in the letter of credit is not dependent upon a legal relationship between the customer and the claimant.

##### Section 686

(1) If the credit terms do not specify that the letter is revocable, the bank may alter the terms of credit or cancel it only with the approval of the claimant and the customer.

(2) If the credit terms specify that the letter is revocable, the bank may alter or cancel it with respect to the claimant until he meets the requirements of the terms of credit.

(3) The letter of credit may be altered or canceled only in writing.

##### Section 687

(1) If the bank which issued the irrevocable letter of credit obtains a confirmation by a correspondent bank, the claimant becomes entitled to make the claim to perform against the latter bank effective on the date that that bank has confirmed the letter of credit to claimant. The bank requesting the confirmation of the letter of credit and the bank which has confirmed it are become jointly and severally liable to the claimant.

(2) The alteration or cancellation of the letter of credit confirmed by the correspondent bank also requires the approval of the confirming bank.

(3) If the correspondent bank has performed on its obligation to claimant under the terms of the letter of credit, it is entitled to demand the same performance from the bank which had originally requested confirmation of the letter of credit.

### Section 688

A bank which only notifies the claimant that a correspondent bank has opened a letter of credit for him is responsible for damages resulting from the incorrectness of this notification but does not assume any liability based on the letter of credit.

### A Confirmed Letter of Credit

#### Section 689

In the case of a letter of credit, the bank is required to perform on its liability with respect to the claimant if, during the life of the letter of credit, drafts specified in the terms of letter of credit are presented to the bank.

#### Section 690

(1) The bank is required to use due care in examining how the presented document are related and whether they conform to conditions specified in the letter of credit.

(2) The bank is responsible for damages suffered by the customer as a result of the loss, destruction, or damage to documents received from the claimant, unless it was unable to avert this damage even with the exercise of due care.

### Other Types of Letters of Credit

#### Section 691

The provisions of Sections 689 and 690 are also applicable to letters of credit, under which it is possible to demand performance of conditions other than the presentation of documents.

### Subchapter XXI. Collection Contracts

#### Section 692. Basic Provisions

By signing a collection contract, the bank promises to collect on certain invoices from a specific debtor or carry out some other type of collections on behalf of the customer.

#### Section 693

(1) The bank will ask that a debtor pay a cash amount or comply with action required under the terms of contract with the bank customer. If the debtor refuses to pay or take the required legal action or if he does not do so without delay, the bank will immediately notify the customer.

(2) In handling collections, the bank is required to use due care in proceeding under instructions from the customer, however it is not responsible for collecting.

#### Section 694

The bank is required to release to the customer, without delay, any collected cash or securities subject to collection. The bank is responsible for any damage resulting from the loss, destruction, or damage to these documents, unless this damage could not be prevented inspite of the exercise of due care.

#### Section 695

If, according to the contract, the bank is to collect through another bank designated by the client, the collection takes place at that bank on the customer's account at his own risk.

#### Section 696

If the fee for handling collectionss is not provided for in the contract, the client is required to pay the bank a fee which is customary at the time the contract was signed.

#### Bank Collection on Invoices

#### Section 697

By signing a contract for collection on invoices, the bank promises to issue to a third party, bills of sale entitling it to dispose of merchandise or other documents if, upon their release, a cash payment is to be made or another act of collection undertaken.

#### Section 698

Any documentation listed in the contract must be received by the bank and handled with all due care.

#### Section 699

The rights and responsibilities of the parties to contract are subject to provisions covering agency contracts.

#### Subchapter XXII. Deposit of Securities or Other Valuables

#### Section 700. Basic Provisions

By signing a contract on the deposit of securities or other valuables, the bank promises to accept certain securities or other determined valuables (the subject of deposit) for safekeeping and the depositor promises to pay a fee for this service.

#### Section 701

(1) The bank is obligated to accept the items for safekeeping and, exercising due care, protect it from loss, destruction, damage, or debasement.

(2) If the the fee is not agreed upon, the bank is entitled to demand a fee which is customary at the time the contract is concluded.

#### Section 702

(1) Considering the nature of the deposit, the bank is required to use due care in all actions necessary to exercise and preservation of the rights which accrue to the depositor from the subject of his deposit release to him, without delay, what the bank has assumed to carry out its duties.

(2) The depositor is required to give the bank the power of attorney which is necessary to carry out the legal actions under in Paragraph 1 and to compensate the bank expenses incurred in carrying out its duties.

#### Section 703

The depositor is entitled to ask for the release of deposited item or a items at any time and to place them back, unless the contract has expired in the meantime. During the period that the depositor keeps the item, the bank is released from responsibility under Sections 701 and 702.

#### Section 704

The bank is liable to the depositor for loss, destruction, or damage to the deposited item unless it was unable to avert such damage despite the exercise of due care.

#### Section 705

Both sides may cancel the contract at any time. The contract is also terminated if the depositor has withdrawn all deposited items and has not indicated his intention to extend the contract.

#### Section 706

After termination of the contract, the bank is required to release all deposited items and the depositor is required to accept them without delay and pay a fee for the period of deposit.

#### Section 707

To ensure its rights based in a deposit contract for securities or other valuables, the bank is entitled to treat the deposit as a pledge while it is in its possession.

### Subchapter XXIII. Demand Deposits

#### Section 708. Basic Provisions

(1) By by agreeing to open a checking account, the bank promises to establish a demand deposit for a customer effective on a certain date and in a certain currency.

(2) This contract requires a written form.

#### Section 709

(1) The bank is required to accept cash deposits or payments made out to the owner of a checking account in the currency for which established and to make specified payments to third parties designated by the the owner in writing against his demand deposit, according to the terms of contract, or make other payments in his name to parties designated by him. If the instructions do not indicate a date of payment, the payment will made on the day following the presentation of the order.

(2) If a joint checking account is established for two or more individuals, each of them has the standing of an owner of the account.

#### Section 710

If the contract provides for payment to order up to a given limit in excess of funds available on the account, the rights

and responsibilities of the parties in making these payments are subject to terms of contract for credit (Section 497 and subsequent sections).

#### Section 711

(1) In return for providing overdrafts, the bank is entitled to a compensation for expenses incurred and may draw upon the the owners account for settlement.

(2) The bank shall correct any accounting errors without delay. The entitlement to compensation for damages is not affected.

#### Section 712

(1) As determined by contract, the bank is required to provide the account owner with a period statement of account.

(2) The account owner is entitled to demand that the bank substantiate the payments it makes.

#### Section 713

(1) The bank is required to credit the owner's demand deposit on the day the bank has acquired the right to dispose with the funds and, effective on that day, the account owner is entitled to receive interest.

(2) The cash expanded by the account owner in accordance with Section 709 above is debited by the bank on the day it made the actual payment and the account owner is not entitled to interest for withdrawn funds.

#### Section 714

(1) The bank pays interest on the remainder of the account. Interest is payable, unless the contract specifies otherwise, at the end of each calendar quarter and is credited to the demand deposit.

(2) If the size of the interest is not agreed upon in the contract, the bank is required to pay interest stipulated by law or in accordance with the law; otherwise, the interest payments are to be those which are customarily paid for accounts maintained under similar conditions.

#### Section 715

(1) The owner may close the account at any time.

(2) The bank can terminate the contract in writing effective at the end of the calendar month following the month in which the account owner was served the termination notice.

(3) The bank shall make the final payment to the account holder or, in accordance with his instructions, transfer it to another account at the bank or, after deducting related expenses, transfer it to an account at another bank.

(4) The bank is required to provide the account owner, without delay, with a statement of account as of the end of a calendar year.

**Article XXIV. Savings Deposits****Section 716. Basic Provisions**

(1) By signing a contract relating to savings accounts, the bank promises to establish such account for its owner in a certain currency and to pay interest on the cash in the account and the owner of the account promises to deposit cash to his account and authorize the bank its use.

(2) If the currency is not specified in the contract, it is considered that the account is being established in Czechoslovak korunas.

(3) This contract requires to be in a written form.

**Section 717**

(1) In the event the account owner disposes of the cash in his account prior to the time contracted or if such time has not been set, prior to the expiration of the deadline, the entitlement to interest payments expires or is reduced according to the terms of contract. If the contract does not give a separate deadline for termination, the termination is effective three months from the day the account owner has notified the bank in writing. It is also possible to withdraw a part of the deposit. The effects of termination or reduction in the interest rates pertains only to interest on the amount for which the termination deadline was not kept.

(2) If the contract so specifies, the account holder is not entitled to dispose of the monetary resources in the account prior to the expiration of the time stipulated in Paragraph 1 above.

**Section 718**

(1) The bank is required to pay interest at a contracted rate or, if a rate has not been agreed upon, at a rate provided by law or based in law; otherwise at market rates, depending on the length of time for which the cash is locked in the account.

(2) Interest is payable upon expiration of the time term specified for the account or after cancellation becomes effective in accordance with Section 717. If a term for deposit has not been agreed on or if it was arranged for a time which is longer than one year, interest is payable, at the latest, by the end of each calendar year.

(3) In the event cash on deposit is for period longer than one year, the bank is required, at the request of the account holder, to pay interest after the expiration of a calendar year.

(4) Interest is computed from the day the bank acquired the use rights to the cash amount. For the day the account holder withdraws the cash, he is not entitled to interest.

**Section 719**

(1) When the term expires or the account holder gives notice according to Section 717, Paragraph 1, above, the bank is required to pay the account holder the cash or to transfer it to his account with another bank.

(2) If the withdrawal notice under Section 717, Paragraph 1, is given on only a part of the cash in the account, the notice effects only that part of cash as provided by Paragraph 1.

**Article XXV. Traveler's Checks****Section 720. Basic Provisions**

A traveler's check is a security which authorizes the party named thereon to receive an amount indicated when presented for payment, under the terms of the issuer of the check.

**Section 721**

The individual who has issued a traveler's check is required to honor it or arrange for its cashing.

**Section 722**

- (1) A traveler's check must include the following:
  - a) be marked as a traveler's check;
  - b) an order or promise to pay the authorized party a specific amount;
  - c) name of the issuer, his signature, or its acceptable facsimile.
- (2) A traveler's with order to pay, must also have name of the payee.
- (3) If the traveler's check does not indicate a payee, it is paid to the holder.
- (4) A traveler's check may issued in currency other than Czechoslovak koruna.

**Section 723**

(1) When a traveler's check is presented for payment, the payor may demand proof of identity of the payee and verification of his signature on the traveler's check.

(2) Payment of the check must be confirmed by a signature of the authorized party.

**Section 724**

Traveler's checks are not subject to laws governing bills of exchange and checks.

**Subchapter XXVI. Promise of Indemnification****Section 725. Basic Provisions**

(1) By issuing a promise of indemnification, the promising party obligates himself to indemnify the party to promise for damages suffered as a result of certain actions requested of him by the promising party and which the recipient of the promise is not required to carry out.

(2) A promise of indemnification must be in written form.

**Section 726**

(1) The liability of the promising party arises with the delivery of a written statement to the recipient.

(2) The recipient of the promise is required to carry out any actions requested by the promising party only if he has obligated himself to do so.

#### Section 727

The promising party is required to pay the costs and any damage suffered by the recipient of the promise in conjunction with the actions requested by the promising party.

#### Section 728

The recipient of the promise is required to take timely measures necessary to avert damage or to limit damage to a minimum, at the expense of the promising party.

### CHAPTER III. Special Provisions for Obligations in International Trade

#### Subchapter I. Adjustments

##### Section 729

The provisions of this chapter apply, together with other provisions of this law, to obligations defined in Sections 261 and 262, if at least one or more of participants has a residence or place of business located in a country different from the other participants but the Czechoslovak Legal Code jurisdiction applies to their transactions.

#### Article II. General Provisions

##### Section 730. Customary Practices

In accordance with Section 264, customary business practices generally observed in international business for similar transactions.

##### Section 731. Official Authorization

(1) A debtor is required to obtain due export permits, a transit permit, or another official authorization necessary for him to meet his obligations at the place specified.

(2) A creditor is required to obtain all due import permits or other official authorization required for the acceptance of his performance on obligation at the place specified.

(3) An obligation outlined in Paragraph 1 arises if the permits therein are required at the time of performance, notwithstanding whether or not they were required when the contract was signed.

(4) If the applicant is legally denied a permit, the impossibility to perform on an obligation arises. The party which has unsuccessfully applied for a permit is required to indemnify the second party for damages resulting from the extinction of the duty to perform, unless the terms of contract have a suspension clause based on the granting of a permit.

(5) Section 47 of the Civil Code does not apply to obligations governed by this portion of the law.

##### Section 732. Currency Used for Cash Obligations

(1) A debtor is required to meet his obligations in the currency in which the contract was negotiated. In cases of doubt, he is required to provide compensation for damages

in the same currency to which he is obligated by the terms of contract or suspension of the obligation.

(2) In the event the laws of the state on whose territory the debtor has his residence or place of business, or in the event other decisive legal provisions prevent payment in the currency prescribed in Paragraph 1, the debtor is required to compensate for damages suffered by the creditor in another currency.

##### Section 733. Currency Conversions

If a cash transaction is negotiated by the parties in one currency and the terms of contract, international agreement, or other legal provisions, require the debtor to make the payment in another currency, the mid-range exchange rate of the two currencies, effective at the time the payments are due at the locations specified in the contract is used; otherwise, the rate of exchange at the creditor's place of business or his residence applies.

##### Section 734. Customary Price or Fee

If this law specifies that a customary price or fee applies for a specific cash obligation, the prices and fees which are customary on the international market are used.

##### Section 735. Loan Payment Defaults

In the case of defaults on loan payments, interest on late payments is charged in the same currency as the obligation note. The debtor is required to pay a one percent late charge on overdue payment under Section 502, where interest rates are set or charged by banks on credit for the period corresponding to the delay in country of debtor's place of business or residence.

##### Section 736. Circumstances Preempting Obligations

The failure to receive an official permit which must be requested under Section 731, is not acceptable as an act preempting a duty to perform.

##### Section 737

(1) Under provisions of Section 381, consideration is given to the amount of generally achieved profit in the country in which the claimant has his place of business or residence.

(2) Under provisions of Section 470, the prevailing price at the location where the goods are to be delivered or, if there is no such price at that location, the prevailing price at a different but comparable location is determinant, taking into consideration the difference in shipping costs.

##### Section 738

If an agent has a place of business or residence outside the territory of the Czech and Slovak Federal Republic, Section 653 is the key factor under the provisions of Section 653 is the territory of the country where the representative has his place of business or residence at the time the contract is signed.

**Subchapter III. Special Agreements****Segment 1. Reexport Restriction****Section 739**

If the purchase contract states in writing that the purchaser is prohibited from reexporting purchased merchandise, the purchaser is responsible to the seller if the goods are reexported by anyone from the specified region. The purchaser is required to indemnify the seller for damages resulting from violation of this requirement, without regard as to whether the merchandise was exported by the purchaser himself or by someone else and regardless whether the purchaser used a suitable means of binding subsequent purchasers from reexporting the items.

**Section 740**

A purchaser who accepted the obligation not to export merchandise may be required, at the seller's request, to show the location of merchandise or to show that it has been used without having been exported.

**Section 741**

If there is doubt as to the area from which reexports are not authorized, it is assumed to be a territory of the state to which the goods were to be dispatched by the seller in accordance with the purchase contract; otherwise, the territory of the state in which the purchaser has his place of business or residence at the time the goods were delivered.

**Segment 2. Agreements To Limit Sales****Section 742**

(1) In an agreement to limit sales, the seller promises not to sell certain merchandise to a given circle of customers or to a certain country or that he will sell this merchandise only on a limited scale or under conditions agreed to in advance.

(2) This agreement must be in written form and its validity is linked to the validity of the purchase contract, of which it is a part or parcel.

**Section 743**

If the purpose of the contract under Section 742 is something other than performance under the terms of international agreements or if it is to circumvent industrial or other intellectual property rights, the subject of this agreement becomes null and void upon violation of the contract by the purchaser or, at the latest, after two years from the time the goods are delivered.

**Segment 3. Currency Clause****Section 744**

(1) If the contract specifies that the price or financial obligation is to be at a specific rate of exchange of the currency in which the transaction is to take place (secured currency) for other specific currency (securing currency) and if, after concluding the contract, a change in this rate of exchange of both currencies occurs, the debtor is

required to pay a sum which is reduced or increased in to ensure that the amount stated in securing currency remains unchanged.

(2) If the contract does not specify the rate of exchange, it is assumed that the median foreign exchange rates valid in the state in which the debtor has a place of business or a residence at the time of contract and at the time the financial transaction takes place.

(3) If clause indicates several securing currencies, the prevailing median rates of exchange between the secured and the securing currencies apply, unless the currency clause indicates otherwise.

**Segment 4. Exclusive Sale Contracts****Section 745. Basic Provisions**

(1) By executing an exclusive sales contract, the supplier promises that he will not supply the merchandise identified in the contract within a certain region to an individual other than the customer.

(2) In the event the contract is not in written form or does not specify the region or the type of merchandise to which the contract applies, it is invalid.

**Section 746**

For the duration of the contract, the supplier may not supply the specified goods directly or indirectly to anyone but the customer or parties specified in the contract. The contract does not invalidate the rights of the supplier to advertise and conduct market research within the exclusive region.

**Section 747**

Individual sales under exclusive sales contract are based on independent purchase contracts. Parts of the terms of these contracts may be agreed upon at the time the exclusive sales contract is being drawn up.

**Section 748**

If the contract does not specify the period of validity, the contract is terminated upon the expiration of one year from its conclusion. If the contract indicates that the parties intended it to remain in effect for an indefinite period and did not specify a time limit, each side may terminate the contract by giving notice which becomes effective at the end of the calendar month following the month during which the termination notice was delivered to the other party.

**Section 749**

(1) If the customer fails to comply with the time schedule in accepting the contracted goods or if he accepts merchandise which is subject to exclusive sales contract from another supplier although he did not acquire this right by contract, the first supplier may can withdraw from the contract, however, he is not entitled to compensation for damages.

(2) If the supplier, in conflict with the contract, provides goods to other customers, the customer may withdraw from the contract.

#### **Segment 5. Contingent Business Contracts**

##### **Section 750. Qualified Contracts**

If the contract or the circumstances under which the contract was concluded indicate that, at the time of its signing, both sides were aware of the extent to which the performance on the contract (principal contract) is contingent on the terms of another contract (contingent contract), it is considered that performance on the contingent contract has a delaying effect on the principal contract. If the contingent contract is to be carried out prior to performance on the principal contract, the failure to meet the terms of the contingent contract has the effect of releasing the parties from the principal contract.

##### **Multiparty Barter Transactions**

##### **Section 751**

For purposes of this law, multiparty barter transactions are considered to be business transactions in which several individuals conclude one contract or several related contracts which are to lead to a mutual delivery of goods among participants having a place of business or a residence on territories of several countries, but with the purchase price to be settled only among those participants who have a place of business or residence on the territory of the same country.

##### **Section 752**

Relationships resulting from multiparty barter transactions are regulated in accordance with provisions on purchase contracts. Each of the participants is entitled to the performance specified in the contract in his favor according to provisions for contracts on third party benefit. However, the participants may not cancel or change the contract without the approval of the participant whose interests would be affected by the cancellation or change.

##### **Section 753**

None of the participants in a multiparty barter transaction can delay delivery of goods to a participant who has a place of business or residence on the territory of another state merely because another participant with a place of business or residence in territory of the same state has failed to meet the terms of contract.

##### **Section 754**

Participants in a multiparty barter transaction who have a place of business or residence in the territory of the same state are each jointly and severally liable for complying with the terms of contract with respect to parties who have a place of business or residence in the territory of another country.

##### **Section 755**

A participant in a multiparty barter transaction is may not withdraw from a contract, even if one of the other participants is in arrears, if one of the other participants has

already met his obligations, unless the withdrawing participant indemnifies the party who has already complied with the terms of contracts.

#### **PART FOUR. GENERAL, TEMPORARY, AND CONCLUDING PROVISIONS**

##### **Section 756**

The provisions of this law are applicable only if an international treaty which is binding on the Czech and Slovak Federal Republic and which has been published in SBIRKA ZAKONU does not carry different provisions.

##### **Section 757**

Provisions of Section 373 and subsequent sections are applicable with respect to responsibility for damages caused by violation of terms stipulated by this law.

##### **Section 758**

(1) If the parties to contract are only individuals having a place of business or residence on the territory of the Czech and Slovak Federal Republic, provisions of this law governing the determination of prices and fees for performance are only applied to the extent that these provisions are not in conflict with generally binding legal provisions on prices. Otherwise, it gives rise responsibility to pay the price or a fee at the highest level authorized by these regulations.

(2) Prices, fees, and other monetary transactions, which are the subject to requirements under the terms of contracts governed by this law and are subject to provisions of law under Paragraph 1 above, are considered to be prices set in accordance with these regulations.

##### **Section 759**

To the extent to which the contract between parties having a place of business or a residence on the territory of the Czech and Slovak Federal Republic or who have a business or its subsidiary in this territory, the quality of items in conflict with the provisions of legal provisions is determined, the determination of quality shall be made on the basis of provisions in these regulations on quality of items authorized for use; this does not apply, if the contract or the declaration by the party which is to acquire the item or by the subject of its transaction indicates that the item is to be exported.

##### **Section 760**

The provisions of this law on binding relations concerning the implementation rights before the court, court proceedings, or a court decision, will also be used as appropriate to assert the rights before an arbiter, an arbitration proceeding, or an arbitration finding, provided they are based on a valid arbitration agreement.

##### **Section 761**

(1) The right of government agencies to dispose with government property is governed by current regulations, including provisions of Sections 64, 65, and 72 through

74b of the Commercial Code until such time that new laws are approved by the Federal Assembly and the National Councils.

(2) The provisions of Sections 70 through 75 also apply in cases of liquidation of legal entities other than corporations if such entities do not have a legal successor and if the legal provisions on their existence do not indicate otherwise.

(3) Until the time the laws in Paragraph 1 are published, the liquidation of state enterprises is controlled by provisions of Sections 27 through 27d of the Commercial Code. The provisions of Section 71, Paragraphs 3 through 6, Section 72, as well as Section 75, Paragraphs 2 and 3, of that law also apply to liquidations of state enterprises.

### Section 762

Provisions regulating bank guarantees, contracts to open a letter of credit, bank collection contracts, securities or other valuables deposit contracts, demand deposit, and savings deposit accounts are also applicable for cases where, instead of a bank providing a bank guarantee, a third person so authorized provides these guarantees and signs contracts.

### Section 763

(1) This law governs the legal relations which have come into being since the day it became effective. Legal relations which came into being prior to the day this law became effective and rights based on them, as well as rights based on the responsibility for violation of obligations required by commercial and other contracts concluded prior to the effective date of this law, are subject to extant regulations. Demand deposit and saving deposit contracts, contracts on the deposits of securities and other valuables, however, are regulated by this law from the day it becomes effective, even if they went into effect prior to this law.

(2) Existing regulations continue in effect for contracts entered into prior to the date of this law and continue to apply until their expiration. The same time limits apply as well for claiming the rights which, according to the preceding paragraph, are subject to existing regulations, even if such time limits become effective after the date of this law.

### Section 764

(1) The legal nature of partnerships, limited partnerships, companies with limited liability, and corporations, which were created in accordance with existing regulations will be governed by the provisions of this law as of the date it becomes effective.

(2) The provisions of a commercial agreements or bylaws of partnerships under Paragraph 1 above which are in conflict with mandatory provisions of this law become null and void on the day this law becomes effective; partnerships or their officers shall adapt partnership agreements or bylaws to this law within one year of the day this law becomes effective and shall send copies to the court of registry. If they fail to comply, the court of registry will summon them to do so, providing an appropriate deadline

for compliance. Upon the expiration of this additional time limit, the court shall dissolve the company and order its liquidation.

(3) Stock certificates which have been issued prior to the effective date of this law, providing for preferences not authorized by this law, shall lose these benefits on the day this law becomes effective.

### Section 765

(1) Cooperatives which came into being prior to the effective date of this law will be converted into partnerships or cooperatives in accordance with this law by a method stipulated by a special law.

(2) Cooperatives converted in accordance with Paragraph 1 above shall adapt their bylaws to this law within the time limit provided by the special law listed in Paragraph 1 above. Within that time, they shall submit their bylaws which are in compliance with this law to the court of registry with a request to effect the necessary changes in the business Register. Together with the adapted bylaws, they shall submit the minutes of the membership meeting at which changes to the bylaws were approved. The minutes will include the approved amount of capitalization and the members contributions. After the changes have been recorded, the existing cooperatives will be considered to have been established in accordance with this law.

(3) The legal nature of the cooperatives listed in Paragraph 1 above is handled in the entry made in the Business Register in accordance with Paragraph 2 of the existing legal provisions and bylaws.

(4) If the cooperatives listed in Paragraph 1 above do not request that changes be made in the Business Register within the given deadline and if they do not do so even after being instructed to do so by the court, the court will order the liquidation of the cooperative.

(5) The provisions of the special law listed in Paragraph 1 above, which regulate the property share of the capital of a cooperative, are used to determine their share in a liquidation. If the distribution is not approved by the stockholders' meeting of authorized persons, the decision will be made by the court.

### Section 766

(1) The founders of cooperative enterprises, under Law No. 162/1990 Sb. on Agricultural Cooperatives, Law No. 176/1990 Sb. on Housing, Consumer, Production, and other Cooperatives, the founder of companies (commercial facilities) operated by civic associations, and participants in joint ventures according to the Commercial Code shall convert the listed companies into corporations or cooperatives under the provisions of this law and shall do so, at the latest, within one year of the day this law becomes effective or will dissolve them by that time. If this does not occur, the court will order the liquidation of the named businesses without a request to do so. The same applies to limited partnerships which issue shares. The provisions of Section 69 will be used as appropriate.

(2) The legal nature and internal conditions of legal entities named in Paragraph 1 above, until such time as they convert into corporations or cooperatives or until they become dissolved, are subject to existing provisions of law.

(3) If a founder of a legal entity named in Paragraph 1 above is a cooperative, the time limit of one year stipulated in Paragraph 1 above begins to run from the day the special law became effective (Section 765, Paragraph 1).

### Section 767

(1) The liquidation of legal entities in accordance with Sections 764 and 766 will be accomplished under the provisions of this law. However, the liquidation balance is distributed according to current regulations, bylaws, founding agreement, partnership or other contracts; if such distribution does not meet these standards, the provisions of this law will be adjusted conform to the one whose form most closely resembles the legal entity being liquidated.

(2) Continued existence of other legal entities engaged in business operations named in Sections 764 through 766 which came into being prior to the effective date of this law under previous laws is not effected by this law. The legal nature and internal legal conditions of such entities will continue to be governed by the laws under which they were established.

### Section 768

(1) Entries made in the Company Register, which is maintained in accordance with current regulations, are considered as entries made in the Business register according to this law.

(2) Legal entities which were to be recorded in the Company Register under the previous laws, are to be recorded in the Business Register as of the date this law becomes effective.

(3) Entries made in the Company Register and which are in conflict with the provisions of this law must be brought in compliance with this law within one year of its effective date. In the event a registered entity does not comply, the court shall instruct it to modify the entry and will set an appropriate time limit for doing so. This provision does not apply to legal entities named in Section 766.

(4) Legal entities or their organizational elements which are entered in the Business Register in accordance with this law and which have not been entered in the Company Register by the day this law becomes effective are required to submit a request to be recorded within six months of the day this law becomes effective.

### Section 769

The duty to make public data required by this law is met by publication of such data in the OBCHODNI VESTNIK [BUSINESS GAZETTE].

### Section 770

The Government of the Czech and Slovak Federal Republic shall issue directives regarding the method and conditions for publishing data as required by this law.

### Section 771

The Government of the Czech and Slovak Federal Republic shall issue the necessary implementing regulations, according to Section 629, by directive.

### Section 772

The following legislation is hereby rescinded:

1. Section 352 of the Civil Code No. 141/1950 Sb.;
2. Law No. 101/1963 Sb. on legal relationships in international commerce (International Commercial Code);
3. Economic Code No. 109/1964 Sb., as amended by Law No. 82/1966 Sb., Legal Provision No. 13/1967 Sb., Law No. 69/1967 Sb., Law No. 72/1970 Sb., Law No. 138/1970 Sb., Law No. 144/1975 Sb., Law No. 165/1982 Sb., Law No. 98/1988 Sb., and Law No. 103/1990 Sb.;
4. Law No. 173/1988 Sb. on enterprises with foreign property participation, as amended by Law No. 112/1990 Sb.
5. Law No. 67/1989 Sb. on national economic planning;
6. Law No. 104/1990 Sb. on stock corporations;
7. Law No. 162/1990 Sb. on the agricultural cooperative movement;
8. Law No. 176/1990 Sb. on housing cooperatives, consumer cooperatives, production cooperatives, and other cooperatives;
9. Section 1, Paragraph 2, Section 3, Paragraph 2, and Section 4 of Law No. 174/1950 Sb. on auctions other than those resulting from garnishment;
10. Law No. 42/1980 Sb. on foreign economic contacts, as amended by Law No. 102/1988 Sb. and Law No. 113/1990 Sb., with the exception of Sections 2, 3, 13 through 16, Section 17, Paragraph 2, Letter c, Section 18, Paragraph 1, Section 19, Paragraph 1, Letter i, Section 22, Letter j, Sections 43 through 56, 58, and 64;
11. Section 13, Paragraph 1, and Section 16, Paragraph 3, of Law No. 83/1990 Sb. on citizens' rights to associate;
12. Directive No. 81/1989 Sb. by the Government of the Czech and Slovak Federal Republic on the obligatory negotiation of supplier-customer relationships and the specification of binding state plan provisions with respect to deliveries by production facilities;
13. Directive No. 256/1990 Sb. by the Government of the Czech and Slovak Federal Republic, which specifies the exports and imports of items as well as other activities requiring permission to engage in foreign trade activities;
14. Directive No. 132/1992 Sb. by the Government of the Czech and Slovak Federal Republic, which identifies cases

where an enterprise with foreign property participation may come into being without a permit;

15. Decree No. 118/1964 Sb. by the Ministry of National Defense, which lists the basic conditions for delivery of products and developmental work intended to secure the defense capabilities of the state, as amended by Decree No. 144/1989 Sb.;

16. Decree No. 135/1964 Sb. by the Ministry of General Engineering and Heavy Engineering, which contains the basic conditions for delivery of engineering products, as amended by Decree No. 57/1972 Sb., Decree No. 107/1981 Sb., and Decree No. 28/1990 Sb.;

17. Decree No. 136/1964 Sb. by the Ministry of General Engineering, issuing the basic conditions for the delivery of repair services to engineering products, as amended by Decree No. 27/1990 Sb.;

18. Decree No. 137/1964 Sb. by the Ministry of General Engineering, issuing the basic conditions for the delivery of repair services to highway vehicles used in motor transport, as amended by Government Directive No. 38/1966 Sb. and by Decree No. 26/1990 Sb.;

19. Decree No. 174/1964 Sb. by the State Material Reserves Administration, issuing the basic provisions for the delivery of state reserves, as amended by Decree No. 181/1989 Sb.;

20. Decree No. 87/1966 Sb. by the State Commission for Technology, the Ministry of Finance, and the chief arbiter of the Czechoslovak Socialist Republic on some economic measures involved in capital construction, as amended by Directive No. 136/1973 Sb. by the Government of the Czechoslovak Socialist Republic;

21. Decree No. 73/1967 Sb. by the Ministry of Agriculture and Alimentation and the Ministry of Forestry and Water Management, issuing the fundamental conditions for the delivery of repair services to agricultural and forestry mechanizational devices, field and earth work, the use of chemicals, and other agricultural work, as amended by Decree No. 147/1989 Sb.;

22. Decree No. 187/1968 Sb. by the Ministry of Chemical Industry, the Ministry of Construction, the Ministry of the Consumer Industry, the Ministry of Heavy Industry, and the Ministry of Foreign Trade, which stipulates the guarantee period pertaining to deliveries used in the construction of buildings for dwelling purposes;

23. Decree No. 152/1971 Sb. by the Federal Ministry of Transportation on economic liability involved in highway transportation;

24. Decree No. 156/1971 Sb. by the Federal Ministry of Transportation on economic liability involved in the transportation of freight on inland waterways;

25. Decree No. 101/1973 Sb. by the Federal Ministry of Technical and Capital Expansion on design competitions, as amended by Decree No. 124/1991 Sb.;

26. Decree No. 104/1973 Sb. by the State Arbitration Commission of the Czechoslovak Socialist Republic, which issues the basic conditions for the delivery of construction work;

27. Decree No. 77/1977 Sb. by the Federal Ministry of Technical and Capital Expansion and by the State Arbitration Commission of the Czechoslovak Socialist Republic on central regulation for products and materials used in construction;

28. Decree No. 82/1977 Sb. by the Federal Ministry of Metallurgy and Heavy Engineering, which contains the basic provisions for the delivery of metallurgical products, ores, refractory products, and metal scrap, as amended by Decree No. 30/1990 Sb.;

29. Decree No. 106/1977 Sb. by the Federal Ministry of Fuels and Energy, which issues fundamental conditions for the delivery of solid fuels, as amended by Decree No. 1/1987 Sb. and Decree No. 3/1990 Sb.;

30. Decree No. 44/1978 Sb. by the State Arbitration Commission of the Czechoslovak Socialist Republic, which issues the fundamental conditions for the delivery of chemical industry products, as amended by Decree No. 26/1982 Sb. and Decree No. 12/1988 Sb.;

31. Decree No. 84/1978 Sb. by the Federal Ministry of Agriculture and Alimentation, issuing the fundamental conditions for the delivery of repair services to agricultural equipment, as amended by Decree No. 148/1989 Sb.;

32. Decree No. 1/1980 Sb. by the Federal Ministry of Transportation, which issues the basic conditions governing the delivery of aviation services in agriculture, forestry, and water management, as amended by Decree No. 37/1990 Sb.;

33. Decree No. 28/1980 Sb. by the State Arbitration Commission of the Czechoslovak Socialist Republic, which issues the basic conditions governing the delivery of polygraphic products, as amended by Decree No. 199/1989 Sb.;

34. Decree No. 38/1980 Sb. by the State Arbitration Commission of the Czechoslovak Socialist Republic, which issues the basic conditions governing products delivered by organizations engaged in domestic trade, as amended by Decree No. 200/1989 Sb.;

35. Decree No. 61/1980 Sb. by the Federal Ministry of Foreign Trade on the establishment and operation of organizational components of Czechoslovak legal entities abroad;

36. Decree No. 62/1980 Sb. by the Federal Ministry of Foreign Trade on the verification of foreign trade activities;

37. Decree No. 64/1980 Sb. by the Federal Ministry of Foreign Trade and the Federal Ministry of Technical and Capital Expansion on procedures to be used in handling industrial rights and production-technical findings in relationships involving foreign countries;

38. Decree No. 140/1980 Sb. by the Federal Ministry of Foreign Trade on the preventive inspection of exported and imported goods and on documentation regarding the use and utilization of imported goods;

39. Decree No. 27/1981 Sb. by the State Arbitration Commission of the Czechoslovak Socialist Republic, which issues the fundamental conditions governing the delivery of health and veterinary products, as amended by Decree No. 142/1989 Sb.;

40. Decree No. 53/1981 Sb. by the Federal Ministry of Foreign Trade on conditions for the provision of foreign trade services in the area of transportation;

41. Decree No. 57/1981 Sb. by the Ministry of Culture of the Czech Socialist Republic on the granting, alteration, and withdrawal of permits to provide foreign economic services in the area of culture and the verification of such services;

42. Decree No. 61/1981 Sb. by the Ministry of Culture of the Slovak Socialist Republic on the granting, alteration, and withdrawal of permits to provide foreign economic services in the area of culture and the verification of such services;

43. Decree No. 91/1981 Sb. by the State Arbitration Commission of the Czechoslovak Socialist Republic, issuing basic conditions governing the delivery of vegetables and fruit among organizations involved in domestic trade and for the industrial processing of the above commodities, as amended by Decree No. 180/1989 Sb.;

44. Decree No. 179/1982 Sb. by the Federal Ministry of Finance on the scope and conditions governing contractual insurance for socialist organizations;

45. Decree No. 181/1982 Sb. by the Federal Ministry of Technical and Capital Expansion on basic conditions governing deliveries intended to support scientific-technical development, as amended by Decree No. 154/1989 Sb.;

46. Decree No. 23/1983 Sb. by the Ministry of Health of the Czech Socialist Republic on the granting, alteration, and withdrawal of permits to provide foreign economic services in the area of balneological therapy and on verifying such services;

47. Decree No. 24/1983 Sb. by the State Arbitration Commission of the Czechoslovak Socialist Republic on basic conditions governing the delivery of scrap raw materials, as amended by Decree No. 140/1989 Sb.;

48. Decree No. 104/1983 Sb. by the Federal Ministry of Foreign Trade on the importation of turnkey projects;

49. Decree No. 8/1984 Sb. by the Federal Ministry of Transportation on basic conditions governing some activities engaged in by the Czechoslovak State Railroads in conjunction with transportation;

50. Decree No. 11/1984 Sb. by the State Arbitration Commission of the Czechoslovak Socialist Republic on basic conditions governing the delivery of construction materials and components;

51. Decree No. 61/1984 Sb. by the Ministry of Health of the Slovak Socialist Republic on the granting, alteration, and withdrawal of permits to provide foreign economic services in the area of balneological therapy and on verifying such services;

52. Decree No. 13/1985 Sb. by the Federal Ministry of Metallurgy and Heavy Engineering, the Federal Ministry of General Engineering, and the Federal Ministry of the Electrotechnical Industry on fundamental conditions governing engineering and electrotechnical deliveries accomplished through the use of higher supplier forms and some additional deliveries destined for domestic use, as amended by Decree No. 29/1990 Sb.;

53. Decree No. 49/1985 Sb. by the Federal Statistical Office on fundamental conditions governing work and services in the area of automated data processing, as amended by Decree No. 170/1989 Sb.;

54. Decree No. 31/1986 Sb. by the Federal Ministry of Foreign Trade, the Federal Ministry of Metallurgy and Heavy Engineering, the Federal Ministry of General Engineering, and the Federal Ministry of the Electrotechnical Industry on fundamental conditions governing the delivery of export turnkey projects;

55. Decree No. 130/1988 Sb. by the Federal Ministry of Agriculture and Alimentation on the principles governing the sale of agricultural products to members and employees of socialist organizations engaged in agricultural production;

56. Decree No. 155/1988 Sb. by the Federal Ministry of Agriculture and Alimentation on fundamental conditions governing the delivery of agricultural products;

57. Decree No. 156/1988 Sb. by the Federal Ministry of Agriculture and Alimentation on fundamental conditions governing the delivery of foodstuffs and some other products;

58. Decree No. 143/1989 Sb. by the Federal Ministry of Transportation and Communications on the contract covering preparations to transport railroad freight car shipments;

59. Decree No. 57/1990 Sb. by the State Arbitration Commission of the Czechoslovak Socialist Republic on the temporary deviation of economic liabilitys from the provisions outlined in Section 295, Paragraph 2, of the Economic Code for branches under the control of the Ministry of Metallurgy, Engineering, and Electrotechnical Industry, the Ministry of Development and Construction Industry of the Czech Socialist Republic, and the Ministry of Development and Construction Industry of the Slovak Socialist Republic;

60. Decree No. 265/1990 Sb. by the Federal Ministry of Trade on the establishment and operation of Business agencies by foreign nationals;

61. Decree No. 533/1990 Sb. by the Federal Ministry of Foreign Trade on the granting of permits to engage in foreign trade activities, on the operation of foreign trade

activities without registration, and on foreign nationals engaging in foreign trade activities;

62. Decree No. 386/1991 Sb. by the Czechoslovak State Bank on payments contacts and accounting;

63. Edict No. 17.525/1981 by the Federal Ministry of Transportation on procedures to be used by Czechoslovak organizations in providing foreign economic services while transporting items (registered in Part 33/1981 Sb.);

64. Edict No. 2/1984 by the State Arbitration Commission of the Czechoslovak Socialist Republic, dated 15 November 1984, which specifies a different arrangement of economic liabilities for the construction of nuclear energy portions of the Temelin Power Plant (registered in Part 1/1985 Sb.);

65. Decree No. 4/1952 UL [OFFICIAL GAZETTE] by the Federal Ministry of Domestic Trade, issuing more detailed regulations on auctions other than distress sales;

66. Basic conditions governing the delivery of products exported by the Chemapol Prague and Chemapol Bratislava foreign trade organizations, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in Federal Ministry of Foreign Trade Edict No. 12/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU [MINISTRY OF FOREIGN TRADE GAZETTE];

67. Basic conditions governing the delivery of products imported by the Chemapol Prague and Chemapol Bratislava foreign trade organizations, issued by the minister of foreign trade on 25 July 1964, as amended by the supplements dated 30 March 1965 and contained in Federal Ministry of Foreign Trade Edict No. 10/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

68. Basic conditions governing the delivery of products exported by the Metalimex and Kerametal foreign trade organizations, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in Federal Ministry of Foreign Trade Edict No. 27/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

69. Basic conditions governing the delivery of products imported by the Metalimex and Kerametal foreign trade organizations, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in the supplement dated 30 March 1965 and in Federal Ministry of Foreign Trade Edict No. 26/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

70. Basic conditions governing the delivery of products exported by the Pragoexport foreign trade organization, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in Federal Ministry of Foreign Trade Edict No. 11/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

71. Basic conditions governing the delivery of products exported by the Ligna Praha and Drevounia Bratislava foreign trade organizations, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in Federal Ministry of Foreign Trade Edict No. 13/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

72. Basic conditions governing the delivery of products imported by the Ligna Praha and Drevounia Bratislava foreign trade organizations, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in the supplement dated 30 March 1965 and in Federal Ministry of Foreign Trade Edict No. 9/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

73. Basic conditions governing the delivery of products exported by the Ceskoslovenska keramika foreign trade organization, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in Federal Ministry of Foreign Trade Edict No. 25/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

74. Basic conditions governing the delivery of products imported by the Ceskoslovenska keramika foreign trade organization, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in the supplement dated 30 March 1965 and in Federal Ministry of Foreign Trade Edict No. 24/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

75. Basic conditions governing the delivery of engineering products for export, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in Federal Ministry of Foreign Trade Edict No. 5/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

76. Basic conditions governing the delivery of imported engineering products, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in the supplement dated 30 March 1965 and in Federal Ministry of Foreign Trade Edict No. 5/1980, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

77. Basic conditions governing the delivery of products exported by the Centrotex, Exico, and Karaexport foreign trade organizations, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in Federal Ministry of Foreign Trade Edict No. 6/1979, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

78. Basic conditions governing the delivery of raw materials, materials, and products imported by the Centrotex, Exico, and Karaexport foreign trade organizations, issued

by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in the supplement dated 30 March 1965 and in Federal Ministry of Foreign Trade Edict No. 5/1979, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

79. Basic conditions governing the delivery of products exported by the Ferromet foreign trade organization, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in Federal Ministry of Foreign Trade Edict No. 7/1978, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

80. Basic conditions governing the delivery of products imported by the Artia and Slovart foreign trade organizations, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in the supplement dated 30 March 1965 and in Federal Ministry of Foreign Trade Edict No. 19/1981, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

81. Basic conditions governing the delivery of products exported by the Artia and Slovart foreign trade organizations, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in the supplement dated 30 March 1965 and in Federal Ministry of Foreign Trade Edict No. 18/1981, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

82. Basic conditions governing the delivery of food and agricultural products for export, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in Federal Ministry of Foreign

Trade Edict No. 33/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

83. Basic conditions governing the delivery of imported foodstuffs and agricultural products, issued by the minister of foreign trade on 25 July 1964, as amended by the changes and supplements contained in the supplement dated 30 March 1965 and in Federal Ministry of Foreign Trade Edict No. 24/1977, published in VESTNIK FEDERALNIHO MINISTERSTVA ZAHRANICNIHO OBCHODU;

84. Federal Ministry of Foreign Trade edict, dated 7 July 1978, which issues fundamental conditions governing the delivery of glass products exported by the Skoexport Corporation.

### Section 773

Regulations governing transportation codes and implementing regulations accompanying Law No. 61/1952 Sb. on maritime navigation, on responsibility for damage to shipments are unusable where they conflict with Sections 622 and 624 of this law; the remaining provisions of those regulations remain in effect.

### Section 774

Decree No. 67/1989 Sb. by the Federal Ministry of Finance on auditors and their activities may be applied, after the effective date of this law, also to the activities of auditors according to Section 40 of this law, until such time as a new law is issued.

### Section 775

This law becomes effective on 1 January 1992.

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